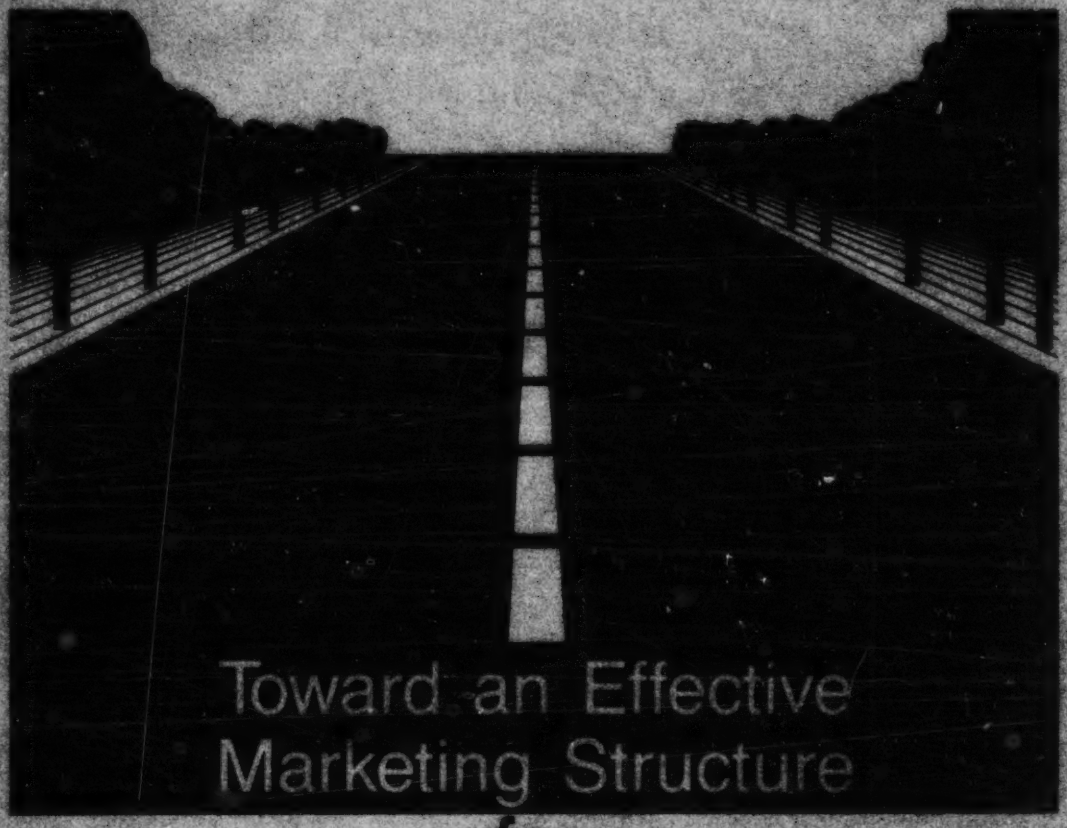

# Toward an Effective Marketing Structure for Woodlot Owners in Nova Scotia

by
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for
Nova Scotia Primary Forest Products Marketing Board

Dated
July, 1988

# TOWARD AN EFFECTIVE MARKETING STRUCTURE

# FOR

# WOODLOT OWNERS IN NOVA SCOTIA

David S. Curtis
Toronto, Ontario

For: Nova Scotia Primary Forest
Products Marketing Board
Dartmouth, N. S.

July, 1988

July 31, 1988

Mr. Graham Langley
Chairman
Nova Scotia Primary
Forest Products Marketing Board
Suite 470
Metropolitan Place
99 Wyse Road
Dartmouth, Nova Scotia
B3A 1L9

Dear Mr. Langley:

I am pleased to present my report on a marketing structure for the woodlots owners of Nova Scotia. It proposes a new structural concept, for which I believe the time is right. I wish you all the success in its implementation.

Yours very truly,

David S. Curtis

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## SUMMARY

The analysis in this report of the problems and weaknesses of the present marketing structure for wood from private woodlots in Nova Scotia shows that it is relatively ineffective and is unlikely to achieve the public policy objectives of "fair" wood prices and a "fair" share of the market for woodlot owners. Certainly the price of wood in Nova Scotia is much lower than the prices in New Brunswick and Quebec where woodlot sector marketing structures have been functioning for almost thirty years. Some of the other problems and weaknesses in the marketing structure as it has evolved in Nova Scotia include:

- An inherent confusion between woodlot owners and producers, with woodlot owners who are not also producers being excluded;
- A member/non-member dichotomy;
- Overlap between groups and regions; and
- A lack of an effective mechanism to finally resolve bargaining disputes.

A new marketing structure is therefore required and is recommended.

The new structure recommended in this report is, in essence, a governing structure primarily concerned with the marketing of wood from woodlots. The structure is to be comprised of regional independent marketing agencies voted in place and governed by all woodlot owners and producers in the region, and that is directly accountable to them. These agencies will be operated under a marketing plan that is approved by the

Nova Scotia Primary Forest Products Marketing Board (the "Board") and passed by Cabinet as a regulation under the Act. The marketing plan will provide the marketing agency with jurisdiction over all wood from private woodlots in its region such that all producers and all wood consumers have only one agency to deal with in a particular area.

The major selling point of this governing structure is that it will be directly accountable to its constituency - all woodlot owners and producers of the region. As such, it will have the potential to evolve into a multi-interest organization, able to represent the concerns and serve the needs of those people.

A critical factor to the success of this new structure is the availability of a mechanism to finally resolve bargaining disputes when they occur. The most appropriate mechanism is arbitration.

Implementation of the recommendations in this report will require some minor changes to the governing legislation, the Primary Forest Products Marketing Act. The Board already has relatively broad powers under this Act and must begin using them to ensure the effective implementation of a new marketing structure. Strong support from the provincial government will be required.

Of the many organizations in Nova Scotia's woodlot sector, none are considered appropriate, in their present form, for collective bargaining purposes. Although this report calls for new marketing agencies to be formed, there is a potential role within the recommended marketing structure for all existing organizations.

There now exists in Nova Scotia a "window of opportunity" to try a new approach. It is hoped that all the organizations and individuals involved in the woodlot sector will support the recommendations in this report as being in the best long term interest of all woodlot owners across the province.

# TOWARD EFFECTIVE BARGAINING FOR WOODLOT OWNERS IN NOVA SCOTIA

## 1. INTRODUCTION

If you cast your eyes inland beyond the shores of Nova Scotia, you will realize that while the heritage and character of its people derive largely from the sea, the extensive forests also play a major role as an important economic backbone of the province and a mainstay of rural life. Forestry provides approximately 30,000 direct jobs and contributes about $750 million to the province annually, making forestry its largest resource-based industry.

Seventy-five percent of the land area of Nova Scotia is forested. Small woodlot owners (400 ha together or less) own just over 52 percent of the forested land while large private and government holdings amount to approximately 21 percent and 26 percent respectively. Just over 30,000 woodlot owners own about 50,000 parcels of small private woodlots.

The woodlot owners of Nova Scotia sell their wood primarily to three pulp and paper mills (Stora, Scott and Bowater), and over 350 sawmills. Other markets include one smaller pulp and paper mill, one hardboard mill and various inter-provincial or international export markets. However, the bulk of the softwood fibre produced from private woodlots is directed to the three large pulp and paper mills. Thus, since woodlots are a significant and vital component of the current and long term timber supply in Nova Scotia, the importance of a stable marketplace in the woodlot sector to the economy of Nova Scotia cannot be overstated.

### 1.1 The Need For This Report

Over the last several decades, the woodlot owners have attempted to establish a bargaining relationship with the pulp

and paper industry. It is generally agreed, despite the intent and objectives of past and present legislation, that past efforts in Nova Scotia have not resulted in a stable market-place for wood from private woodlots, nor what can be objectively considered a "fair" price for that wood. Certainly there is a marked difference between the price of pulpwood in New Brunswick and Quebec where woodlot sector marketing groups have been functioning since the early 60's, and Nova Scotia (Nova Scotia being lower). Further, many supply problems are being experienced in Nova Scotia for reasons not the least of which is the existence of a variety of organizations representing various interests in the woodlot sector who are divided in their dealing with the forest industry. It is becoming apparent that this ineffective marketing structure impedes both the economic development of the woodlot sector and the management of the woodlot forest resource.

These problems were described in a report entitled "Woodlot Owner Organizations in Eastern Canada: Historic Development, Legislation, Structure, Financing and Services", Information Report M-X-162, Canadian Forestry Service-Maritimes 1987. That report stated at page 58:

> The marketing structure as it has developed in Nova Scotia has been relatively ineffective. Successes have been modest and few, and the many organizations now involved seem to lack a sense of unity and common direction.

This report is intended to address these problems and recommend solutions. There is always a certain risk associated with reports such as these. One participant in Nova Scotia caustically complained about:

> ...other consultants that in the past have left their "dropping" on the "recommendations road" of our forest industry.

If that is how this report is perceived, one can only hope a sufficient number of people step in it and understand what it is saying so that real change occurs. Hopefully, it will provide cause for optimism and assist in achieving a balance between the forest industry and the woodlot owners of Nova Scotia.

## 1.2 Study Objectives

The object of this study is to determine and to outline the reasons why the legislative regime governing relations between the forest industry and the woodlot sector has not resulted in the private woodlot sector having an effective bargaining position with industry or stability in the marketplace for wood from private woodlots, and to recommend alternatives both in terms of a bargaining structure and an organizational approach. Consideration of an organizational approach includes identifying organizations appropriate for collective bargaining, appropriate bargaining units, a workable and fair levy system and criteria for registration.

The report will:

- Describe the existing regime;
- Outline and analyze the problems being experienced; and
- Identify and explore alternative approaches (i) within existing legislation and (ii) requiring changes to the legislative regime.

## 1.3 The Policy Framework

The yardstick against which the effectiveness of the woodlot sector marketing structure must be measured is contained in the 1986 Forestry Policy for Nova Scotia. This policy followed the 1984 report of The Nova Scotia Royal Commission on Forestry which, among other things, identified marketing as the key to effective allocation of wood supply. It also suggested that more secure and equitable terms are needed for the sale of wood fibre in small quantities.

The 1986 Forestry Policy notes the importance of the woodlot sector and points out that private forest lands are the most productive and accessible in the province. The policy is based on the need for:

- Scheduling of harvests;
- Allocation of wood to its best end use;
- Marketing of forest products in an orderly and effective manner;
- Silviculture; and
- Protection from fire, insects, disease and competition.

In order to apply these principles to private woodlots, some form of effective structure or organization is required that represents and serves the needs of woodlot owners.

The Forestry Policy includes the following policy objectives:

- To encourage the development and management of private forest lands as the primary source of timber for industry in Nova Scotia;

- To ensure that private owners have a fair share of the available market for primary forest products and receive a fair and reasonable return for primary forest products sold;

- To ensure that owners continue to enjoy the traditional rights and responsibilities of private ownership of land; and

- To amend The Pulpwood Marketing Act to better reflect the needs of small private producers with respect to (a) the registration of bargaining agents; (b) the organization and funding of bargaining agents; and (c) the resolution of bargaining disputes.

The intent of The Pulpwood Marketing Act as stated in the Forestry Policy is to "provide for a more effective basis for the marketing of primary forestry products". Stated in other terms, its main objective is to redress an imbalance in the bargaining position of private woodlot owners in Nova Scotia, in relation to the forest industry. Following the 1986 Forestry Policy, this Act was amended (now called The Primary Forest Products Marketing Act) and introduced along with four other forestry-related acts as part of what has been called the most comprehensive and up-to-date framework for renewable resource management in Canada.

This report will evaluate whether the legislation has achieved the goal of effective marketing in the woodlot sector and, if not, whether it is capable of doing so.

## 1.4 Free Market vs. Regulation

The forest industry spokesmen interviewed for this report insisted that regulation is not required (although some are more willing to accept it than others), and that there is sufficient competition in the marketplace (the market referred to is the sale of wood from woodlots to the forest industry- primarily three large pulp mills).

Therefore, at the outset, the question of whether legislative intervention in the marketplace is really needed must be dealt with, although strictly speaking that question is beyond the scope of this report. The issue the report deals with is not whether regulation is required, but rather what form regulation will take. In other words, not whether bargaining will take place, but how. The decision to intervene in the market was a policy decision taken by the government of Nova Scotia with the introduction of the first Pulpwood Marketing Act, and reaffirmed with the 1986 Forestry Policy and the new Primary Forest Products Marketing Act. This report will recommend how best to achieve these policy objectives.

It is well settled that in the past, the market has not been competitive. This was pointed out in the MacSween Royal Commission on Forestry in the 1960's, and again by MacKeigan, C.J.N.S. (as he then was) in Nova Scotia Forest Industries vs. Nova Scotia Pulpwood Marketing Board (1975) 12 NSR 2d, 91. Mr. Justice MacKeigan noted at page 124 of that case:

> 153 The five mills are widely scattered in the province and each draws its supply primarily from the area around it. The supply areas, of course, overlap but

> geography and transportation costs confined most sellers to one particular mill. A Cape Breton woodlot owner, for example, thus has little practical option but to sell to the nearest mill, Stora Kopparbergs at Port Hawkesbury.

154 Each mill is thus in a near monopolistic position as a buyer from the small sellers. Each is what the economists term a monopsony in its region and can come close to being able to dictate the prices at which it will buy from the sellers. Farmers feel helpless against this power. Hence, during the last eight or nine years, the woodlot owners, through their main association and its 18 county subassociations, have, as shown in the briefs before the Board, tried to organize and to press for marketing controls which they hoped would protect them from the mills. In this effort they have been strenuously opposed by the mills, who fought any restraints on their powers, and by sawmill operators and other members of the Forest Products Association.

The 1984 report of the Nova Scotia Royal Commission on Forestry noted on page 43:

> The purchasing position of the pulp mills within their catchment areas has many of the attributes of monopsony, though all make purchases from locations in the central core of the province.

and on page 44:

> There is little evidence that competitive markets, in the accepted sense, exist for raw material, and the establishment of marketing boards and bargaining agencies reflects dissatisfaction with previous

> arrangements for the supply of raw material to processors.

More recently, Burchell, J., in Burton, MacPhee et al. vs. N.S. Pulpwood Marketing Board et al., February 19, 1988 (NSSC, TD) noted on page 2 that:

> As early as 1964 Mr. Robert MacSween, a provincially appointed commissioner, reported on an unusual situation in Nova Scotia where five major pulpwood companies held virtual monopolies on the supply of pulpwood within five fairly well-defined territorial divisions. At the same time, approximately one third of the productive woodland was owned by thousands of small woodlot owners. Not being organized the small owners and producers were unable to coordinate their marketing efforts and the pulp companies were in a position to dictate prices that yielded to the small producers only "substandard wages with little or nothing for stumpage or maintenance".

As an indication that the situation has not changed significantly, F.L.C. Reed, a respected forest policy analyst, stated recently in his report "Nova Scotia Forest Tenures: A Review of Stumpage, Forest Management and Market Access", November, 1987 (the Reed Report), at page 42:

> There is no large scale freely competitive market for standing timber in any province of Canada.

and, regarding Nova Scotia:

> ...the demand side is often characterized by one or two buyers. Inter-provincial trade and export trade in roundwood are not well

> enough developed to improve the bargaining leverage of woodlot owners.

and:

> There is no question that the small woodlot owner is handicapped in the marketplace because of the market structure. It is in recognition of this fact that a number of provinces have marketing legislation and oversight by an independent board.

In discussing market access in Nova Scotia, Mr. Reed went on to say at page 47:

> In the background of course is the relatively powerful market strength of the three large pulp and paper mills. As long as their market power prevails, a fully competitive market does not exist. The challenge is to provide for a better balance in the market by means such as the Primary Forest Products Marketing Board (PFPMB), group ventures and collective bargaining for pulpwood trees.

And now, this report will add another voice to this chorus. A truly competitive market does not appear to exist in Nova Scotia as between the woodlot owners and the pulp and paper industry. It is true that in some cases there is more than one buyer for a woodlot owner's pulpwood. However, there appears to be an insufficient degree of competition to result in what might be considered a "fair" price to satisfy the public policy objectives.

No doubt a truly competitive marketplace would be the best option for the woodlot owner, providing them with the highest price and a high degree of market stability. But if the market cannot or should not be made truly competitive, it should

be regulated to the extent necessary to achieve an equitable relationship between the buyers and the sellers according to policy objectives.

What is a truly competitive market? A standard definition is: many buyers and many sellers with no external forces favouring either side. Can this be achieved in Nova Scotia? It can, particularly if the Nova Scotia government assists in bringing in more exporters and creates a structured bidding system. There are many offshore buyers as well as buyers in other provinces. Of course, if this is desirable for woodlot wood, it should also be desirable for crown wood. This would involve cancelling long term crown leases and putting the wood up for auction on a regular basis. If the industry desires a competitive market, it would make sense that it be truly competitive for all wood supplies except their own lands. Then the price of wood will be whatever the market will bear, an accepted characteristic of free enterprise.

Is a truly competitive market desirable? Certainly for the sellers of wood, a price war holds the promise of higher prices and diverse markets. However, a great deal of wood will likely leave Nova Scotia and local industries may lose secure wood supplies. There would be a loss of value-added benefits and some local industries may close or at lease trim operations thus preventing local expansion. It is therefore not in the best long term interest of Nova Scotia to encourage the export of wood. It may even become necessary to stem the outflow if it becomes too large. The Royal Commission Report in 1984, while acknowledging that it would be desirable to "encourage the development of open competitive markets for raw material, which are most effective when the forces of supply and demand are balanced" expressed concern that projected wood shortages could

not sustain an export market and local industry both. Effective regulation is therefore a more desirable alternative than exports.

## 1.5 Dealing With Industry Opposition

However it is achieved, a stable market is desirable for both woodlot owners and industry. It is generally agreed that an imbalance exists between the woodlot sector and the forest industry in favour of the forest industry. It is the policy of Nova Scotia to redress that imbalance through the use of marketing legislation which permits bargaining to take place. Industry, for the most part, opposes this process as it traditionally opposes all forms of collective bargaining. However, it is not possible to both meet industry's concerns and meet the public policy objectives at the same time. Therefore the implementation of a public policy to achieve a fair price and a fair share of the market for woodlot owners will most likely have to continue to be carried out despite industry resistance. The goal is to balance the interests of both industry and the woodlot sector (level the playing field) without giving an undue advantage to either side.

It may provide the government of Nova Scotia with some comfort to know that the marketing structures for woodlot owners in New Brunswick and Quebec were also implemented despite forest industry resistance and yet the industry in those provinces remains and is viable. In fact, considerable expansion has taken place. The Quebec government at one time took the extreme step of passing legislation forcing the industry to buy specified volumes of wood at specified prices from woodlot owners. The legislation was only used a few times to persuade a reluctant industry to deal with the new organizations. It is not

recommended that Nova Scotia take this extreme step. However, a firm hand is required on the part of the government to ensure that legitimate public policy objectives are not impeded by a reluctant industry. In New Brunswick and Quebec, the new organizations were given the powers they needed to deal with industry and over time a spirit of cooperation has evolved from initial suspicion. Certainly as wood supply tightens up in Nova Scotia and the pressure increases to manage both the forests and the marketplace, industry may become more willing to deal with organized groups and realize there are many benefits associated with them.

## 2. THE CURRENT SYSTEM

### 2.1 Background

The Primary Forest Products Marketing Act (the "Act") represents the culmination of a long and complex struggle spanning over 40 years of efforts on the part of woodlot owners to bargain with the pulp and paper industry. The first piece of legislation addressing the problem, The Pulpwood Marketing Act, was enacted in 1972 as an alternative to proceeding with a marketing board system for wood products under the then Natural Products Marketing Act. The Pulpwood Marketing Act permitted the registration of bargaining agents for wood from private woodlots and created a Pulpwood Marketing Board to oversee the registration and functioning of the bargaining agents. This approach is continued, with some modifications, under the new Act.

#### The Structure

In a given geographic area, suppliers of pulpwood from private woodlots are grouped together for bargaining purposes to bargain with a particular mill. To be registered as a bargaining agent, an association of producers must obtain the support of a significant number of producers representing a majority of the wood supply. The bargaining agent, if registered by the Board, may then negotiate, among other things, pulpwood prices and volumes for suppliers to that mill.

There are currently three bargaining agents for pulpwood in Nova Scotia:

- The Nova Scotia Land Owners and Forest Fibre Producers Association (NSLFFPA), is registered to bargain for suppliers of pulpwood from the seven eastern counties to Stora Forest Industries, located in Port Hawkesbury on Cape Breton Island. The bargaining function is carried out by the eastern branch of the association (ENSLFFPA);

- The Nova Scotia Woodlot Owners and Operators Association (NSWOOA), is the bargaining agent for pulpwood from the seven central counties to Scott Paper Limited, located in New Glasgow. The bargaining function is carried out by a division of the association, the Central Suppliers Division; and

- A third bargaining agent, The Wood Product Manufacturers Association (WPMA), is registered to bargain with Scott Paper Limited for pulpwood produced by its member sawmillers.

Registration of bargaining agents and the bargaining process are overseen by what is now called The Nova Scotia Primary Forest Products Marketing Board, formerly known as the Pulpwood Marketing Board. Both will be referred to as the "Board".

**The Court Decisions**

In a history characterized by legal battles, the seminal decision affecting the development of the existing groups was the so-called 1975 MacKeigan decision in N.S. Forest Industries vs. N.S. Pulpwood Marketing Board (Supra). This decision set aside the registration of the then Nova Scotia

Woodlot Owners Association on two main grounds: that it did not have the support of all groups of pulpwood producers of Nova Scotia, for whom the Board had registered the association as bargaining agent; and that the association was not appropriate for collective bargaining since it did not represent all wood producers. The decision also pointed out several weaknesses in the legislation, and noted that the Board had not followed its own somewhat sketchy procedures. If ever there was a signal that a process was on the wrong track, this was it. Unfortunately, rather than change the process, the situation continued to get worse as participants rallied to try to make the legislation work and meet the requirements of the MacKeigan decision.

More recently, Burchell, J. in Burton MacPhee et al. vs. N.S. Pulpwood Marketing Board et al. (Supra) discussed the legislative scheme including the Board's procedures. Mr. MacPhee applied for an Order declaring certain sections of the Pulpwood Marketing Act inconsistent with the Canadian Charter of Rights and Freedoms, and alternatively for an Order to quash a decision of the Board not to decertify the NSWOOA as bargaining agent with Scott Paper Limited. Mr. Justice Burchell found the legislative scheme flawed to such an extent that it infringed the Charter, but that the flaw was in the lack of standards of the Board rather than the Act itself. He stated that the Board's decisions revealed shifting standards and that the Board reserves unto itself the right to decide each case on its particular facts. Due to the insufficiency of standards, he went on to quash the decision of the Board but suggested that it not be remanded back to the Board until proper standards are adopted by the Board. This effectively leaves the Board in limbo until the adoption of new standards or a successful appeal of the decision, which is now pending.

## 2.2 The Act and the Board

The purposes of the Act are:

- To provide for the organization and funding of bargaining agents;
- To provide for the registration of bargaining agents;
- To provide for the resolution of disputes;
- To facilitate and support the continued development of the forest resources held by private woodlot owners; and
- To enable private woodlot owners to have a fair share of the available market for primary forest products and receive a reasonable return for primary forest products sold.

The Act establishes the Board which oversees the operation of the Act. The Board is comprised of seven members: two from the forest industry sector (one pulp and paper, one sawmill); two from the woodlot sector; and three independent members from which a chairman and vice-chairman are appointed. The Board, among other things, is empowered to register bargaining agents and acts as a liaison between the producers and consumers of forest products for collective bargaining purposes. It also has powers of investigation and licensing.

The Act provides for procedures to allow collective bargaining to take place. Following its registration as a bargaining agent, an association must apply to the Board for a declaration that a bargaining situation exists with a particular consumer before negotiations can commence. A list of issues must be provided along with evidence that a bargaining situation

exists, and this process must be repeated each time the association wishes to negotiate a collective agreement.

**Dispute Resolution**

If a dispute arises, either one of the negotiating parties may apply to the Board for a Declaration of Deadlock. Under the old Act, the Board had the power to act as mediator but otherwise there were no means to resolve disputes. Under the new Act, however, following a Declaration of Deadlock the parties may apply for mediation. If this does not result in an agreement being reached, the Board has the power to set the price of wood at the level recommended by the mediator for six months or until the parties reach agreement. If no agreement has been reached after six months, the process can be repeated. There are also provisions to ensure the continuation of buying and selling pending an agreement being reached.

## 2.3 The Players

### a) Nova Scotia Woodlot Owners and Operators Association (NSWOOA)

This group, formed in 1969, is a province-wide association which operates as an umbrella organization through which various affiliated groups can operate. These affiliated groups include county associations, suppliers divisions (the bargaining arms) and various associations such as christmas tree associations. The NSWOOA was conceived as being the major power base of woodlot owners in the province which would satisfy all needs including marketing, forest management and lobbying. Many existing organizations in Nova Scotia are offshoots of the NSWOOA. Unfortunately, many of these groups have split from the

NSWOOA. Its membership is decreasing and its effectiveness has greatly diminished in recent years.

The Central Suppliers Division of the NSWOOA still operates as the marketing arm in relation to Scott Paper Limited, but relations between the division and the NSWOOA are extremely poor.

**b) Nova Scotia Land Owners and Forest Fibre Producers Association (NSLFFPA)**

This is also a province-wide organization which began in 1984 as a result of a split between the NSFI Suppliers Division of the NSWOOA and the NSWOOA. The eastern branch of the NSLFFPA (ENSLFFPA) has taken over the job of the NSFI suppliers division of bargaining with NSFI (now called Stora Forest Industries), with the NSLFFAA being the registered bargaining agent. A western branch exists but has no bargaining rights. The eastern group is interested in expanding the area in which the association is certified to bargain.

**c) Wood Product Manufactures Association ("WPMA" or "the Sawmillers")**

This group, formed in 1981, represents approximately 25 wood processors (mainly sawmills) in the central region. It is registered to bargain with Scott Paper Limited for pulpwood produced by its members, although they also bargain for the sale of wood chips.

The sawmillers feel vulnerable in their relationship with the pulp and paper industry since the pulp companies own the largest sawmills in the province, and the sawmillers depend heavily on the pulp and paper companies for a supply of sawlogs

and a market for wood chips (a byproduct of sawmilling). So far, they have preferred to deal with the pulp and paper industry on their own rather than join forces with the woodlot owners.

**d) Group Ventures**

Group ventures are organizations in which woodlot owners have grouped their properties for forest management purposes to help overcome diseconomies of scale and fragmentation of ownership. Their primary purpose is the delivery of publicly-funded forest management services to their members, but they are also involved in marketing wood from members' properties. Subsidized by government funds, these groups are sometimes seen as unfairly competing with other suppliers of wood.

There are 18 of these groups in Nova Scotia, representing over 1,600 woodlot owners and supplying a significant volume of the wood originating from woodlots. None are registered as bargaining agents for their members. These groups have recently joined forces to form a provincial organization called the Forest Group Venture Association of Nova Scotia. Primarily a lobbying organization, it has recently expressed interest in either becoming a registered bargaining agent, or participating in some manner in a new bargaining structure.

**e) The Pulp and Paper Industry**

The three major pulp and paper mills are Stora, Scott and Bowater.

**Stora**

Stora has the longest history of being involved in collective bargaining for pulpwood. It signed its first contract with the then NSFI suppliers division of NSWOOA (now the ENSLFFPA) in 1980. Of the three mills, Stora relies most heavily on wood from private woodlots, purchasing approximately 67 percent from their wood supply from that source. They are also the most heavily dependent on crown wood of the three mills, obtaining approximately 33 percent of their wood supply from a large crown lease. A small amount comes from their own holdings of 20,000 ha.

**Scott**

Scott has been involved in collective bargaining with the Central Suppliers Division of the NSWOOA since 1982. Scott owns 445,000 ha of its own land, which supplies about 50 percent of its wood requirements. The balance is purchased from woodlot owners and sawmills. Scott also leases a small amount of crown land.

**Bowater**

Bowater has never been required to bargain collectively with suppliers of wood. Although they own a large amount of their own land (303,000 ha), it is their stated policy to purchase as much wood as is offered for sale from the private sector. Although Bowater does not lease any crown land, they recently negotiated a back up access to crown land as a comfort factor in support of an expansion of mill capacity.

In addition to producing pulp and paper, these three large companies are interested in diversifying. For example, Scott has become the province's largest sawmiller and also produces a large amount of christmas trees.

**f) Other Groups**

**Silviculture Contractors**

These contractors do a significant amount of silviculture work on private woodlots, and produce an amount of wood as a result. They have formed a provincial association of silviculture contractors.

**Truckers**

Although not yet formally organized, truckers play an important role in getting the wood from the roadside to the mill. Some truckers act as buyers.

So far, bargaining agents have negotiated roadside prices rather than mill-delivered prices, and have left the organization of trucking the wood for the most part up to the mills. This situation may change if future bargaining agents and mills negotiate mill-delivered prices and the manner in which trucking takes place.

## 3. MAJOR PROBLEMS AND WEAKNESSES OF THE CURRENT SYSTEM

### 3.1 The Woodlot Owner/Producer Dichotomy

Section 1(e) of the Act identifies as one of its purposes:

> To enable private woodlot owners to have a fair share of the available market for primary forest products and receive a reasonable return for primary forest products sold.

A woodlot owner is an individual who owns a piece of forested land (the term "woodlot owner" is not defined in the Act).

However, the Act and the bargaining structures apply to producers only, and contemplate participation by producers only.

A producer is defined as:

> A person who owns the primary forest products at the time it is cut and prepared from trees for sale, but does not include a person who is primarily a processor of primary forest products or an affiliate of such person.

The Act permits the registration of "associations" as bargaining agents. An association is defined as:

> Any organization of producers or buyers of primary forest products which has a written constitution, rules or by-laws setting forth objectives and purposes and defining the conditions under which persons may be

admitted as members thereof and continue in such membership.

An association to be registered as a bargaining agent must have the support of producers with a proven ability to collectively supply something in excess of 50 percent of a buyer's private purchase requirements.

The foregoing illustrates the confusion regarding the terms "woodlot owner" and "producer". Further, there is an apparent contradiction between the purpose of the Act as it relates to woodlot owners and the exclusion of a woodlot owner who is not also a producer from the formation, operation and application of the organizations through which the purposes of the Act are accomplished. Since only a small number of woodlot owners produce wood at any given time, the majority of woodlot owners appear to be excluded from the marketing structure although all woodlot owners are potential producers.

## 3.2 The Member/Non-Member Dichotomy

As mentioned above, the Act permits the registration of "associations" as bargaining agents. An association is a group of people with common interests who join together for specific purposes. It is formed and operated by its "members". Anyone who is not a member has no formal role in the functioning of the association or in the development of its policies. However, the associations that are registered to bargain for wood in Nova Scotia have the authority to negotiate prices for virtually all private wood that is produced from woodlots in a region. Regarding volumes, the groups may negotiate an overall volume as well as what proportion of that volume is allocated to members and non-members. The association then administers the

volume quota for its members, and the mill administers the quota for non-members. The structure thus created is a bargaining agent which affects all woodlot owners and producers but which is accountable to only a small group of members.

In reality, the two groups which bargain for wood from private woodlots - the Central Suppliers Division of the NSWOOA and the ENSLFFPA - include some woodlot owners who are not producers in their membership. Nonetheless, the Act requires them to be an association of producers, and this remains their primary interest.

Some practical and serious problems arise as a result of this structure. First, the bargaining agents deal with only a portion of the total supply of wood in an area and this portion varies according to the size of their membership. This considerably weakens the bargaining position of the association. The number of members delivering wood to Stora through the NSLFFPA, for example, has dropped considerably in the last few years, and the Company has expressed a strong concern about the reliability of the association in meeting its volume commitments.

Second, both the associations (supplying Stora and Scott) have negotiated themselves into a corner by tying their member quotas to historical production. The association cannot accommodate increased wood production of members, and as members leave, the association loses that volume. If a member cannot be accommodated by the association, there is an incentive to leave the association and deal directly with the Company since the Company is not similarly restricted as to how it administers quota to non-members. While this is a problem the association negotiated themselves into (and can therefore negotiate themselves out of) it is related to the first problem in that

the association does not represent all the wood supply for volume delivery purposes.

Third, and perhaps most important, there is as yet no organization to represent the interests of woodlot owners and producers who are not members of existing bargaining agents but who are nonetheless involved in marketing.

## 3.3 Overlap

### a) Between Groups

There are at least three organizations which claim to represent the interest of woodlot owners either directly or indirectly:

- The 18 group ventures throughout Nova Scotia;
- The NSWOOA and its Central Suppliers Division; and
- The NSLFFPA, the eastern arm of which is a bargaining agent.

There is very little communication between these groups, and an increasing amount of competition between them as to who best speaks for woodlot owners in Nova Scotia.

In the Reed Report (Supra), Mr. Reed observed at page 43:

> The rapid rise in the group ventures has challenged the traditional woodlot owner associations. More importantly, the split of the NSWOOA into two groups (one in Port Hawkesbury), and a satellite to the NSWOOA in New Glasgow has obviously weakened the voice of the woodlot owners. Although the

> latter retain bargaining rights, they have lost the initiative in communications, extension and relations with both industry and government.

These problems could potentially get worse since under the Act it is possible for more than one group to bargain for the same commodity in the same area. Even now, there are two bargaining agents for pulpwood from central Nova Scotia to Scott Paper: the WPMA and the Central Suppliers Division of NSWOOA. And other organizations have expressed an interest in becoming certified to bargain for pulpwood in areas where bargaining for pulpwood is already taking place. To draw an analogy with unions, if this were a labour situation, we would have more than one union representing the same worker in the same plant, with the potential for more to be formed. Without a doubt, it would be more desirable for all the players to be on the same team and heading in the same direction with respect to their role as sellers of wood to the forest industry.

**b) Between Regions**

There are currently two regions for bargaining purposes in Nova Scotia:

- Seven eastern counties, in which the NSLFFPA is certified for the purpose of bargaining with Stora; and
- Seven central counties, in which the NSWOOA is certified for the purpose of bargaining with Scott.

There is an overlap of three counties between these two regions. Many woodlot owners and producers belong to both organizations.

This situation is complicated by what has been termed "industrial creep". Both Scott and Stora in recent years have begun buying wood from outside their traditional buying regions in areas unrepresented at the bargaining table. Increasing the size of the bargaining areas would increase the amount of overlap and perhaps the amount of confusion associated with it. However, the status quo results in a certain financial advantage to producers outside the bargaining areas (in the amount of the marketing levy), and neither option addresses the problem of "cross trucking" whereby wood is not always going to the closest available market.

Creating a third bargaining region around Bowater in the west may only compound the problem proportionally, with the central region being an area unto itself as well as an area of overlap between both the east and the west.

## 3.4 Dispute Resolution

The Act outlines a negotiation structure and a dispute resolution process (Section 8 - 15) briefly described earlier. There are at least three problems with it:

- The process is lengthy and cumbersome;
- Mediation can apply to any issue on the bargaining table. However, only price can be the subject of an interim order by the Board, and then any increase is withheld from the sellers until an agreement is reached; and
- The process is circular, with no way to end it. An interim order setting the price only lasts for six

months after which the negotiation and mediation process must start anew.

Section 1(c) of the Act states that one of the Act's purposes is to "provide for the resolution of bargaining disputes". While the mediation process may serve to encourage settlement (it has not yet been tried), it is apparent on the face of the Act that it does not provide for an ultimate resolution of a dispute. It is therefore apparent that the Act is unable to achieve its purpose in this regard.

## 3.5 Government Support

The provincial government has, both recently and in the past, made significant efforts to address the concerns of woodlot owners. But with respect to the marketing of wood these efforts are generally considered to fall short of what has been needed. There is a strong feeling in the woodlot sector of being let-down in this regard. The legislation has been and still is rather weak in that it does not enable woodlot owners to bargain from a position of strength or even an equal footing. Part of the reason for this may be that the woodlot owner organizations have been perceived to lack widespread support from woodlot owners, which would serve to weaken their lobbying ability. Comparing this with the powerful lobby of the forest industry it is little wonder various governments have been reluctant to deal firmly with the situation.

The Board itself, in spite of a wide mandate, has also been unwilling until recently to take the steps needed to sort things out. Its buffeting from a string of legal challenges over the years may be largely to blame in addition to a previously narrow view of its role. It has dealt with the

development of the existing structure on an ad hoc basis, with little or no long term planning. Although the Act provides for "marketing plans" none have been prepared with the result that bargaining situations are left open to challenges from all angles.

## 3.6 Market Levies

A market levy is a fee for marketing services expressed in dollars per unit of products sold. The amount of the levy and who gets it is a contentious issue, and always sparks fierce debate. The Board is financed by a levy of 10 cents per cord applied against all private wood sold to industry, and 5 cents per cord applied against all crown and industry wood used by industry. The ENSLFFPA and the central suppliers division of the NSWOOA are financed by a levy of 95 cents per cord from all pulpwood supplied from their respective areas by producers selling wood to the mill being bargained with. The Wood Products Manufacturers Association (sawmillers) as bargaining agent to Scott is financed by a levy of 50 cents per cord applied against all pulpwood sold to Scott by all sawmillers.

Depending where the wood is produced, the seller may have a market advantage in the amount of the levy. For example, a seller within Scott's market region must pay the levy of 95 cents per cord if the wood is sold to Scott. But a seller just outside that market area does not have to pay the levy. In this manner the levy becomes very influential in determining who wood is sold to and whether new bargaining agents should be formed.

## 3.7 Personality Conflicts

This is the most unfortunate aspect of the long struggle to improve the position of the woodlot owners. While some personality conflicts are to be expected in any organizational structure, these have been exacerbated by a weak bargaining structure and a generally perceived inability of any group or individual to make real progress. Some observers think the divisions between groups and individuals are so deep that they cannot be overcome. This is too pessimistic an outlook. Much of the problem lies with the legislation and the bargaining structures themselves rather than the groups or individuals involved. Adopting a new and effective bargaining structure will help ease existing ill feelings (particularly if it succeeds).

Obviously personality conflicts will not entirely disappear no matter what approach is adopted. However, a structure should be designed within which conflict can be resolved rather than one which falls apart each time a disagreement occurs.

## 4. ELEMENTS OF A NEW APPROACH

The following elements should be components of whatever system is adopted:

### 4.1 Include Woodlot Owners As Well As Producers

The common thread running through all the organizations and individuals involved in the woodlot sector is the woodlot owner. This group of people must form the basis of a marketing structure. There seems to be universal agreement that woodlot owners be included along with producers in the formation and operation of wood marketing agencies that affect wood from private woodlots. This is not really as self-evident as it may first appear. A marketing organization has no jurisdiction over wood until it is produced. Since producers produce wood there is some logic to having a structure involving producers. However, the people who own the resource are the ones who have the greatest stake in the availability of markets and the price of wood whether they produce wood for sale or not. These people are ultimately the focus of any effort to either access private wood or manage the private forest resource for future wood supplies. They must be present at the bargaining table.

Producers, while acknowledging that woodlot owners must be included, express the concern that their affairs will be controlled by passive woodlot owners who rarely produce wood for sale and who do not understand the business. In reality, passive owners remain just that: passive. It is difficult enough to get these people to attend meetings let alone participate. Normally only interested and active owners participate. Producers, most of whom are woodlot owners, are often looked to for leadership simply because they know the

business and supply the bulk of the wood. Although producers and woodlot owners have somewhat different interests (producers buy stumpage from owners), for a marketing structure to work properly they must both be present at the bargaining table so that both their interest can be accommodated.

## 4.2 Accountability to all Woodlot Owners

A corollary to the first element, it is fundamental to the success, long term stability and effectiveness of an organizational framework that all woodlot owners (as well as producers) have the right to vote on the formation of a marketing agency and have the right to attend meetings, raise issues and cast a vote: one vote per woodlot owner. Membership of woodlot owners in an association should not be a requirement to have a voice in matters that directly affect them.

## 4.3 Regional Representation

Like any province, Nova Scotia has its own unique groupings of people into distinct regions. Each region has its own interests and its own way of dealing with things. Each region must be represented as a part of a marketing structure, and be able to influence its own affairs within that structure. A regional group should not feel as if it is being controlled from outside. It is worth noting that part of the reason for the success of the group venture movement is that they are local independent groups with close contact with their members.

## 4.4 No Overlap: One Group, One Area, All Products

Competition between organizations representing the same people and the same commodity must be eliminated.

Boundaries must be clearly drawn. Within each area, only one marketing organization should have jurisdiction to bargain for all the wood from private woodlots in that area with anyone wishing to buy it. This would provide that group with the ability to coordinate available wood supply to available markets.

## 4.5 Strong, Pro-Active Government Support

If the public policies earlier outlined are to be effectively implemented, the government should provide stronger support than has been provided in the past and should become actively involved in the process to the extent necessary to keep it on track. This support must come from the political side, the Department of Lands and Forests, and of course the Board in its supervisory capacity as an independent body.

At a minimum, the support required entails ensuring that the crown does not compete with the woodlot owners in the sale of wood to industry, and providing the woodlot owner marketing organizations and the Board with the powers they need to deal effectively with the forest industry.

## 4.6 Strong Leadership

Implementing a new approach will be both difficult and challenging. There are capable people involved in the woodlot sector now with considerable expertise that can be brought to bear. These and others will be needed. Perhaps the Board can play a role in encouraging credible and capable people to come forward, taking care not to taint a new approach with negative images of past ill-will.

## 4.7 A Smooth Transition

Nova Scotia's woodlot owners are not starting from a blank slate. They have been fighting for bargaining rights for over 20 years, and there is a bargaining structure currently in place. It is important that a new approach is seen as having the potential to improve the present situation rather than lose ground that has been so hard won. This assessment must be made by the woodlot owners.

## 4.8 Ability to Evolve

A new structure must have the flexibility to grow and evolve according to the wishes and the needs of the woodlot owners.

## 4.9 Effective Dispute Resolution

Lastly and most importantly, there must be a mechanism to finally resolve bargaining disputes when they occur.

## 5. DISPUTE RESOLUTION: THE CASE FOR ARBITRATION

For as long as they have been seeking bargaining rights, the woodlot owners have been seeking access to final and binding arbitration as a means of resolving bargaining disputes. The goal has eluded them. Negotiations have been entered into between the producers and the pulp mills with both sides knowing there is no recourse in the event of a dispute. Without a way to resolve disputes, the stronger side in a bargaining relationship will win the day. In this case the stronger side is the forest industry. More than one bargaining group has stated that they have no choice but to take what the company offers, and that in the past, the mediation process served only to put a stamp of approval on a low price. Many now feel that under the circumstances, bargaining is a waste of time.

It would appear, then, that the government's policies of improving the woodlot owners' bargaining position cannot be achieved without a way to finally resolve disputes. The importance of this point cannot be overstated.

Generally speaking, the tenor and the course of negotiations are largely determined by the mechanism available for settling disputes. For example, negotiations will be taken seriously by a company if the company knows the other side has the power to shut down the company's operations for an indefinite period of time.

What are the options for Nova Scotia woodlot owners to influence the price of wood and the availability of markets? There are four options:

- Strike (withhold wood supply);

- Export wood to outside buyers;
- Price and quota-fixing powers; and
- Arbitration.

**Strike**

It is unlikely that woodlot owners could organize to withhold their wood supply given the large numbers of individuals involved and their economic dependence on a continuous flow of wood. But even if they could, it must be remembered that the woodlot sector is but one of several sources of wood to the industry. Two of the three large pulp and paper mills have enough of their own land to run their mills indefinitely. Therefore, strike is not a realistic alternative unless during a strike it was made an offence for anyone involved in the dispute to buy or sell wood, and the Company involved was prohibited from taking wood from its own land.

**Price and Quota-Fixing Powers**

If either the Board or the marketing agency were given price and quota-fixing powers, there would not be a negotiation process and arbitration in that context would not be an issue. It is doubtful that this concept would find many supporters although it was proposed more than once by people interviewed for this report.

**Export**

In the absence of an effective bargaining structure, woodlot owners will turn to other means to influence local prices and markets. The potentially effective option of export is currently being more fully explored. As outlined earlier, it may not be the most desirable option for the long term interest

of Nova Scotia. However, if restrictions are placed on exports and the government does not permit access to binding arbitration, the woodlot owners could be left with little bargaining strength and the policy objectives of both the woodlot owners and the government will continue to be defeated as they have been to date.

**Arbitration**

Arbitration is the only realistic alternative to provide the woodlot owners with the bargaining strength they need.

Mr. Justice MacKeigan discussed the above points in his 1972 conciliation report of a dispute between the forest industry and the woodlot owners. He suggested that the woodlot owners' marketing powers should be added to by including either provision for arbitration in the form of price-fixing by the Board when negotiations break down, or provision for strike action by the woodlot owners when negotiations break down. In the end, the woodlot owners got neither. Regarding the power to strike, Mr. Justice MacKeigan noted on page 11 of his report:

> It might be pointed out that it is quite possible that, if very strong strike enforcement provisions were supplied, the buying companies might find themselves forced to accept even harsher and more difficult terms than might be imposed by a price-fixing board.

This seems to be a strong suggestion that arbitration is a preferred alternative. In any case, the current Act prohibits a strike by requiring the sale of wood to continue during disputes (see Section 10A(2)).

## 5.1 The Effect of Arbitration

If arbitration is available at the end of the negotiation road, the weaker side is able to negotiate with more confidence, and the stronger side takes the weaker side more seriously.

In New Brunswick, each year towards the end of negotiations there are several requests for arbitration from the various woodlot owner groups. These requests only occur if conciliation fails to bring the two sides to a settlement, which it frequently does. When arbitration is requested, this in itself encourages settlement. If it does not, and arbitration is granted by the Board (the Board having the discretion to grant it), the fact that it is granted often encourages settlement. If it does not and an arbitration board is named, this may in itself encourage settlement. If not, the process of the arbitration board meeting the parties often encourages settlement. Only in a few cases over the years has an arbitration decision actually been handed down. In other words, the simple fact that arbitration is available encourages settlement, without it actually being used.

## 5.2 The Influence of Crown Wood

There is one significant difference between New Brunswick and Nova Scotia. In New Brunswick, all pulp and paper mills (10 or 11 of them) rely on crown wood as a significant source of wood supply. They are not permitted access to crown wood until either settlement is reached or arbitration is granted (which guarantees settlement). By contrast in Nova Scotia, only one pulp mill relies significantly on crown wood.

However, it is important to point out that without arbitration, the withholding of crown wood would likely not be a workable concept in New Brunswick. Without arbitration, lack of settlement and a withholding of crown wood at the same time could shut down the industry involved, disrupting the entire economy. It is, however, a significant incentive for a company to settle.

Since Nova Scotia does not have the lever of crown wood to encourage a company to settle, access to arbitration becomes that much more critical. In the absence of the crown wood lever to encourage negotiation, the government must consider the many other ways in which industry relies on favourable relations with the government, in addition to access to arbitration.

## 5.3 Industry Opposition

The forest industry opposes arbitration even more strongly than regulation and bargaining (although some companies are more willing to bargain than others). The industry is not necessarily opposed to the concept of arbitration since existing collective agreements contain arbitration provisions relating to interpretation or administration of the agreement. However, it is the application of arbitration to the negotiation of the collective agreement itself that is opposed.

Since it is highly unlikely that industry can be persuaded to support arbitration, and since it is so essential to the woodlot owners' bargaining position, once again as with marketing legislation it may have to be firmly implemented despite industry resistance. It is worth pointing out that

arbitration can work both ways. If industry has a stronger case, it will win the day.

Again, access to arbitration for the woodlot owners is critical, and it is unlikely that the public policy objectives regarding woodlot sector marketing can be achieved if it is not there in the background as a possibility at the end of negotiations. If arbitration had been available from the start, there is a strong likelihood that the initial organizational approach would have held together and this report would be unnecessary. The main reason why the groups split up and lost support is because they were - and are - perceived to be ineffective in their dealing with industry.

## 6. ALTERNATIVE ORGANIZATIONAL STRUCTURES

The following organizational approaches have been suggested as possible alternatives:

### 6.1 Status Quo, With Or Without Modification

In light of problems and weaknesses earlier outlined, no existing organizations in their present form can be considered appropriate for collective bargaining.

With some tinkering, the present organizational model might attain some of the essential elements I outlined earlier. For example, the Board might consider requiring that woodlot owners vote on whether an association should represent them, and preparing a marketing plan to permit all woodlot owners to participate in its decisions. However, these changes may not be legally possible within the legislation as it now stands and in any case tinkering will not change the fundamental nature of the existing groups. Nor can it address the problem that they are perceived to lack widespread support. A new approach is therefore required if the public policy objectives are to be met.

### 6.2 Endow The Board With Price And Quota-Fixing Powers

This contemplates an approach now used in some agricultural commodities in Nova Scotia as well as the Public Utilities Board. For it to work, the Board would need production control powers similar to those in use in the agricultural sector. Wood supply could be regulated through regional marketing organizations with woodlot owner participation. Prices could be established using a price formula taking all

factors into account including the end product price of the mill's product.

The government of Nova Scotia should only consider this approach as a last resort, if it becomes clear that even a new bargaining structure is unable to achieve the public policy objectives. A negotiated solution is always preferred over an imposed solution. In any case, it is unlikely that this approach would find widespread support at this time even amongst woodlot owners due to the need for production control.

Alternatively, it has been suggested that this approach be used as a temporary measure until an effective bargaining structure is established. Again, it should only be used as a last resort.

### 6.3 Create Separate Bargaining Units For Woodlot Owners And Producers

This novel suggestion contemplates two tiers of negotiations. First, the woodlot owner bargaining unit would negotiate stumpage rates with the producers and contractors. Then, the producers bargaining unit would negotiate a mill-delivered or roadside price with the mill. Or vice-versa. The truckers and/or the buyers may also be interested in negotiating with the producers or perhaps with the mill. The next question is whether all this should be done on the regional or province-wide basis.

This concept recognizes that producers and woodlot owners have different interests: the woodlot owner wants high stumpage values, while the producers want to keep as wide a margin as possible between stumpage and roadside prices so as to

maximize operating profits. However, breaking the price of wood into its various components and giving each group separate bargaining rights dilutes their relative bargaining strengths and complicates an already complex situation enormously. They could quite possibly spend more time fighting amongst themselves than trying to negotiate higher prices from the pulp mills.

Producers and woodlot owners should be able to sit at the same bargaining table across from the forest industry, use their collective strength to get the best deal possible, and then allocate the price to its components in a fair and equitable manner. This will not be easy, but it can and should be done.

### 6.4 Establish A Province-Wide Association Comprised Of Province-Wide Interest Groups (i.e. Woodlot Owners, Producers, Sawmillers, Etc.) With Regional Bargaining Units Accountable To The Province-Wide Association

In this scenario, there would be regional negotiations but the regional bargaining units would function as agents of the province-wide association. The province-wide association would function as coordinator between the bargaining units, as well as coordinator between the various province-wide interest groups. Presumably, the regional bargaining units can either be similar to a Supplier's Division in that they negotiate with only one mill, or could be responsible for specified geographic limits and negotiate with any buyers who want private wood originating from within that region.

### 6.5 Establish A Province-Wide Bargaining Unit With Regional Divisions Accountable To It

The difference between this alternative and the one preceding it is that in this scenario, there is one bargaining

unit only for all the private wood in the province with authority to bargain for any or all regions rather than regional bargaining units. There could either be one set of negotiations with a committee formed of industry representatives, or a series of negotiations between the bargaining unit and each mill. Contracts would be administered through the regional groups.

## 6.6 Regional Independent Bargaining Units

In this scenario, each group would be independent and responsible for all the private wood within its regional boundaries. Participation in any province-wide association would be entirely voluntary on the part of the regions. If a province-wide association of the regional groups were formed, it would be accountable to the regions.

## 6.7 Discussion

Of the above alternatives, only the last three or some variation of these would accomplish the desired goals and the essential elements earlier outlined.

### Is a Province-Wide Bargaining Unit Desirable?

A province-wide bargaining unit is not appropriate, at least not yet. The attraction of the province-wide approach is that it carries with it compelling logic. But when you inject the realism of human nature and look at the past experiences in Nova Scotia of the province-wide approach, it begins to lose its appeal.

One of the reasons for the collapse and imminent demise of the bargaining structure of the NSWOOA (regional bargaining

divisions accountable to a province-wide association) is that it tried to do too much too soon. This problem was compounded by a top-down approach which says in effect that the division is an agent of the association and will "damn well do what it is told" (as recently expressed). Once the NSFI Suppliers Division (now the ENSLFFPA) achieved a measure of independence it broke away from the NSWOOA and became fully independent. Recently, there has been a breakdown of communication between the NSWOOA and its Central Supplier's Division, with the division apparently not wanting anything to do with its parent body.

The organizational structure (for bargaining purposes) of the NSWOOA is a concept that has not been successful and should not be repeated. It would be a disservice to recommend a structure that could collapse if one dissident region decides to go on its own, which seems to be inevitable. Past experiences have demonstrated that people need to feel in control of their own region and have a measure of self-determination. Regions differ greatly from one to the other, and common bonds are generally restricted to these distinct regions (Note: This refers to sociological bonds. As woodlot owners, people's interests are the same all across Nova Scotia). One may conclude, then, that regional groups will have a tendency to break away from a province-wide structure as soon as they achieve a measure of independence.

The kind of structure that will work is one that is built from the bottom up - in stages - as local support is obtained. Regional groups must be independent. They will most likely join together to form a voluntary association as the Group Ventures recently have done, and may ultimately agree to negotiate jointly with other groups. However, the relationship between the regional groups and the association will be just the

reverse of that contemplated by the NSWOOA structure: the voluntary association of groups will be the agent of its regional members and it will "damn well do what it is told" by a consensus of the regions. To go further down the chain of accountability, the regional group should be accountable to all the woodlot owners in the region, being able to do only what the woodlot owners allow it to do.

There are many successful organizations that have developed in this manner: agricultural commodity groups; unions; industry associations, etc. Even Canada started regionally before the provinces voluntarily formed a confederation. Start local and expand. It works.

Many people now involved in the woodlot sector may find this discouraging. After all, it took the groups in New Brunswick and Quebec over 20 years before they covered their provinces. It should not take that long in Nova Scotia for two reasons:

- Two of the three mills have a history of bargaining for private wood and will likely cooperate with a new approach despite their objections; and

- Under a new, regionally-based marketing structure, Nova Scotia woodlot owners will have the experience of similar structures in New Brunswick and Quebec to draw on. The same problems that will be experienced in Nova Scotia have been dealt with and for the most part solved in those two provinces.

**Is A Province-Wide Bargaining Unit Attainable?**

A province-wide bargaining unit is most likely not attainable in Nova Scotia, at least not yet. Partly born of frustration, some participants seem to want a great deal, immediately. But the kind of strength observed in the organizations in New Brunswick and Quebec is a result of years of consensus-building among woodlot owners. It did not happen overnight and it only happened in a region when the woodlot owners in that region were ready for it.

To go province-wide right off the bat would require a province-wide campaign, assuming the structure would be based on a woodlot owner vote rather than imposed. Such a campaign would require tremendous financial and human resources and would likely meet tremendous resistance. Even if the finances were available, there may not be enough resource people among the current groups to carry it through. Communication between groups is poor and the organizations themselves may not have the resources or support to lead a campaign. For these reasons, a province-wide campaign would likely fail and could be a setback to the movement from which it may never recover. To have such a campaign only partially succeed could be even worse.

A province-wide approach for a province-wide bargaining agent stands the greatest chance of failure. A local approach, one region at a time, stands the best chance of success. All the human and financial resources of the Board and the groups in the area can be focussed in that area to conduct an intense and highly publicized campaign. Once the first region is established and operating successfully, other regions will have an example to consider in deciding whether to adopt the same approach. The

first area formed will provide valuable experience and develop new leadership that can be used in forming subsequent areas.

**Mill-Centred vs. Regional Bargaining Units**

Unless negotiations are conducted on a province-wide basis between a committee representing all sellers and a committee representing all buyers (which is not likely an as yet attainable goal), there would appear to be two possible approaches:

- Establish bargaining units representing all suppliers to a given mill; and

- Establish bargaining units representing defined geographical regions. All buyers of all private wood within that region must deal with the bargaining unit.

A variation of the first approach is currently in use in Nova Scotia whereby all suppliers in a distinct region to a particular mill are represented by one bargaining unit (i.e. producers in the seven eastern counties supplying Stora are represented by ENSLFFPA). In this manner there is only one set of negotiations with each mill. Some of the inequities in the current system could be remedied by eliminating the geographic boundaries such that all suppliers are represented by the bargaining agent and must pay the levy.

The <u>disadvantages</u> to the mill-centred approach include:

- It is based on wood producers rather than woodlot owners;

- Large wood procurement areas mean large areas of overlap between bargaining units;

- It could be difficult to achieve broad based support; and

- It has not been universally effective in its present configuration.

The advantages to this concept include:

- Increased bargaining strength by grouping all producers;

- No competition between different groups dealing with the same mill; and

- Administratively easy to supervise negotiations.

With the second, regional approach, there could be several sets of negotiations with each mill: one for each region from which the mill purchases wood. This approach is similar to that used in New Brunswick and Quebec. The size of an area may be anywhere from one to several counties, or part of counties.

The disadvantages to the regional approach include:

- Possible reduced bargaining strength since a marketing agency would deal with smaller volumes relative to a given mill (although this could be compensated by an ability to deal with all buyers);

- Possibility of competition between groups negotiating with the same mill, which would enure to the mill's benefit; and

- There would be a greater difficulty in supervising a greater number and combination of negotiations.

- If a regional group is too small, its operating costs may be too high in relation to the operating funds that could be generated from a small volume of wood sales.

The advantages to the regional approach include:

- A greater ability, due to smaller geographic size and participation of woodlot owners, to be a truly representative body of that area;

- A greater likelihood, for the same reason, of obtaining support and participation of woodlot owners as well as producers;

- The ability to negotiate with all buyers of wood in the area, since each region will have jurisdiction over all the private wood in the area;

- No overlap between regions;

- The regional groups can form the basis of a voluntary province-wide lobby group which may ultimately, if woodlot owners desire, evolve into a province-wide bargaining unit; and

- It works in New Brunswick and Quebec and has held together in those provinces for almost 30 years.

This last point has considerable persuasive value.

## 7. RECOMMENDED APPROACH

A new organizational approach should have the following characteristics:

### 7.1 New, Regional And Independent Marketing Agencies

Modelled after the New Brunswick and Quebec examples, It is **recommended** that new organizations be established with defined geographical limits to a maximum of four counties.

It is not necessary to make recommendations as to where the boundaries should be since natural lines of division will become apparent as woodlot owners are consulted and groups begin to form. Any area larger than four counties becomes very difficult to administer and could begin to lose its focus and its ability to represent the area. In New Brunswick, the largest marketing agencies are three counties in size.

It is **recommended** that these marketing agencies be autonomous within their own regions and operate independently one from the other, unless, once established, they choose otherwise.

### 7.2 Governed By A Board-Approved Marketing Plan

A marketing plan is essentially the constitution of the marketing agency. It identifies its boundaries, its purposes, its powers, its mode of operating including requirements for district and annual meetings and the election of its board of directors. The authority for preparing marketing plans is contained in the Act. Once approved, a marketing plan becomes a regulation under the Act.

It is recommended that marketing plans be drawn up by the Board in consultation with woodlot owner representatives in the areas requesting bargaining status. In preparing the marketing plans, the Board has the advantage of seven examples in New Brunswick and fifteen examples in Quebec to draw on.

**Who Administers The Marketing Plan?**

A marketing plan can be administered one of two ways:

- The plan can create an entirely new board of directors to administer it; and
- The plan can be administered by an existing association.

The second choice can be confusing. A marketing plan contains marketing powers which affect all producers and owners, and requires accountability to them. But the plan can be administered by an association, a legally distinct membership organization with a separate board of directors. The Boards of directors may be the same people, but the directors under the marketing plan must be elected by all woodlot owners. Similarly, all woodlot owners can vote on any matter under the jurisdiction of the marketing plan, whereas only members of the association can vote on strictly association business.

In reality, this situation is mainly for administrative convenience and recognizes that there is a role for an already existing association of woodlot owners and producers that already had broad based support. In Quebec, the majority of the marketing plans are administered by associations. In New Brunswick, only one is although most others are affiliated with

an association of some form or another and the boards of directors of the association and the marketing agency are often the same people.

This second approach is obviously an option in Nova Scotia since there are already certain groups in existence. However, given the disarray and division between existing groups in Nova Scotia, It is **recommended** that the new marketing agencies be administered by a new board of directors created under the authority of the marketing plan. Then, existing groups can interact with the new marketing agency (as it is done in New Brunswick) if that is what woodlot owners want.

Alternatively, if the Board is of the opinion that an existing group should have the chance to administer a marketing plan, woodlot owners should be given a choice as to whether they want: (a) an existing organization to administer a marketing plan or (b) a marketing plan that is administered by its own newly created board of directors. Either way, whether or not a new marketing agency retains the identity of an existing organization should be the choice of the woodlot owners in the area.

## 7.3 With Jurisdiction Over All Wood From Woodlots In Its Area

It is **recommended** that a marketing plan give the regional marketing agency the power to negotiate terms of sale of all primary forest products originating from woodlots in its area, including price, volume, delivery schedules and any other matter relating to the sale and delivery of wood, subject to approval by the Board (see next recommendation).

It is recommended that these powers may only be used with the prior approval of the Board. For example, a region may initially desire to negotiate for the sale of pulpwood only to one particular mill. Then, they may wish to negotiate with other pulpwood buyers needing wood from their area. Eventually, they may become interested in negotiating for the sale of sawlogs to the larger sawmills requiring wood from their area. The Board must evaluate whether the use of these powers is appropriate in the circumstances.

**Should The Marketing Agency Be The Exclusive Sales Agent?**

The marketing plans can vary from one area to another depending on the wishes of the woodlot owners and producers in the area. Or, even if they are all the same, all the powers in the plan may or may not be used, again depending upon the wishes of the people in the area. In Quebec for example, some marketing agencies operate as bargaining agents and exclusive sales agents, while other simply negotiate prices only, leaving the job of volume deliveries up to the mills and the buyers in the area.

Bargaining agents in Nova Scotia have also acted as sales agents in that they are required to deliver contract volumes to the mill according to negotiated delivery schedules. However, they are not exclusive sales agents since anyone else can sell wood to the mill, albeit at the price negotiated by the bargaining agent. In Quebec, many of the bargaining agencies are exclusive sales agents meaning that no one can sell wood to mills without the approval of the marketing agent. In New Brunswick, none of the bargaining agencies have this power although as a matter of practice there is little wood sold to

the mills that does not go through the marketing agencies' contracts.

A marketing agency with the power to be exclusive sales agent may be difficult to sell to many producers and may face stiffer opposition by the mills, but it would give a new organization the power it needs to be very effective very quickly.

On the other hand, an organization without this power would be easier to sell and, based on the idea of starting small and expanding, could build up support over the years so that for all intents and purposes it would be the exclusive sales agent.

Again, due to past disarray, division and confusion, a new group would stand the greatest chance of being successful and effective if it had sales jurisdiction over all wood in its area. It is **recommended** that the marketing plans grant to the new marketing agencies the power to be exclusive sales agents to the mills they negotiate with, in relation to wood from their area.

To do otherwise than this would lead to the same problems as experienced with the member/non-member dichotomy discussed earlier. By being exclusive sales agents, a new marketing agency would be better able to fulfil its volume commitments, thereby addressing one of the forest industry's main concerns about the current groups' reliability. The Board can determine whether full exclusivity is appropriate in each region.

As a supplement to their ability to act as sales agents, It is **recommended** that the marketing plans contain the

power to license buyers and sellers in the region, subject to the approval of the Board. Although the Board presently has such a licensing power and should retain it, it should be delegated to the marketing agencies. In this manner the marketing agencies have more of a say in their own affairs, and the Board retains its impartiality.

## 7.4 Voted In Place By Woodlot Owners and Producers

It is **recommended** that a marketing plan be voted in place by all eligible woodlot owners and producers in the region to which the plan applies.

It is **recommended** that, to be eligible to vote, a woodlot owner must own a minimum of 10 ha of forested land in the region, and a producer who is not a woodlot owner must own the cutting rights to at least 10 ha of privately owned forested land in the region. A producer who is not a woodlot owner must apply to the Board to be registered as a voter. A woodlot owner is automatically able to vote as an owner of forested land and need not register to do so.

It is **recommended** that a private owner who also owns a wood processing facility be excluded from the vote and the operation of the marketing plan (the Act currently exempts producers who are processors from its operation).

It is **recommended** that a vote be conducted by secret ballot: one person, one vote.

**What Should constitute A Successful Vote?**

In designing its criteria, the Board must take care not to incorporate into its requirements an incentive not to vote. For example, if there are requirements that a certain percentage of woodlot owners must vote and a certain percentage of land must be represented in the vote, there is a real danger- demonstrated by past experience in New Brunswick - that the focus of those opposed to the marketing agency will shift from campaigning against it to encouraging voters not to vote. The required percentages of participation may not be achieved thereby defeating the vote on a technicality rather than on its merits. To draw an analogy, if in a federal election it was required that a certain percentage of the wealth of the nation must be represented in a vote, then a small group of wealthy people can defeat the process simply by not voting. Similarly, if a federal election required that 50 percent of all Canadians must vote, few elections would meet this requirement. At both the federal and provincial level, the outcome of an election is governed by a simple majority of those who choose to vote. Rarely do all eligible voters vote even though all have the right to do so. We can safely assume that those who do not vote are content to be governed by the wishes of those who do.

In the situation at hand, it is important that all eligible woodlot owners and producers have the right and opportunity to vote, and are able to become knowledgeable about the issues if they so choose. But the outcome must be governed by the wishes of a large majority of those who choose to vote. A large majority is important since the success of a new marketing agency will depend on a substantial support of those who are interested and active.

Court Comments On Voting Criteria

Mr. Justice MacKeigan, in N.S. Forest Industries vs. N.S. Pulpwood Marketing Board (Supra) said at paragraph 173 that:

> The Board merely has to ascertain the support or desires of the sellers in a general way.

Mr. Justice Burchell in MacPhee et al. vs. N.S. Pulpwood Marketing Board et al. (Supra), in addition to saying the Board must be specific and consistent said at page 26:

> The omission of any stipulation as to the method by which support is to be measured is undoubtedly objectionable but I am not prepared (as counsel would have me do) to prescribe any specific method because I think that is a matter for the Board to stipulate by way of regulation.

In addition, Mr. Doane Hallett, Q.C., a past chairman of the Board, noted in a 1976 Board decision that the Board has the power to determine voting criteria.

It is recommended that the Board not approve a marketing plan unless it is approved in a vote, supervised by the Board, by at least a two-thirds majority of those eligible voters who choose to vote. However, It is recommended that the Board retain the discretion not to approve a vote if it is obvious that, in all the circumstances, an insufficient number of voters have voted, and too small a proportion of land was involved in the vote. This discretion would only be used in extreme circumstances. For example, if a vote was held and only 10% of woodlot owners voted, this would be obviously insufficient support. As a guideline, a reasonable minimum target should be

one-third of all woodlot owners representing one-third of the woodlot acreage in that region. If uncertain about the degree of support, the Board might consider a conditional approval with a more frequent performance review.

**Periodic Review**

It is **recommended** that the Board review, at least once every five years, whether the new marketing agency should remain in place. Such an automatic review will in most cases be a mere formality, but it gives all parties the opportunity to systematically review the groups' performance and let their views be known to the Board. However, the Board must take care not to become preoccupied with frivolous and mischievous complaints.

## 7.5 Operated And Governed By Woodlot Owners And Producers

The woodlot owner/producer dichotomy referred to earlier also exists in New Brunswick and Quebec due to a certain amount of confusion in some of the marketing plans. There is now an opportunity to clarify this situation.

It is **recommended** that the marketing plan specify clearly that all woodlot owners and producers have the right to attend meetings of the local marketing agency, to raise matters of concern and vote on them. This establishes the critical accountability to the woodlot owners referred to earlier. In this manner the new marketing agency becomes a representative body of all woodlot owners and producers in the area and can only do what a majority of woodlot owners and producers want it to do.

It is **recommended** that the marketing plan specify that each marketing region be divided into districts and that district meetings be held at least once a year, before the annual meeting.

It is **recommended** that the Board of directors be formed of at least one director elected at the district meetings by the woodlot owners and producers in attendance. A board of directors should be comprised of at least ten to twelve directors.

It is **recommended** that the officers of the board of directors be elected at the annual meeting, by those attending the annual meeting, from among the directors with the exception of the president who could be nominated from the floor. In this manner, the president may or may not be one of the elected directors.

Since a marketing agency deals with the production and sale of wood, it would be reasonable to require the directors to have experience in the production of wood. It is **recommended**, that to be a director or officer, a person must own a woodlot and have produced wood for sale at least once in the preceding five years.

As stated earlier, producers need not fear that passive woodlot owners will take over the operation of the new marketing agencies, since passive woodlot owners usually remain passive. The real danger is that boards of directors do not become overloaded with contractors who do not give due consideration to the interests of woodlot owners as woodlot owners. However, if legitimately elected, who can argue with majority rule?

## 7.6 Fair Market Levies

Many suggestions have been made about levies. As previously stated, this is a most contentious issue.

It is **recommended** that the market levy for a region be determined by majority vote at the annual meeting of the marketing agency in that region, subject to approval and supervision by the Board.

It is **recommended** that the levy be payable directly to the marketing agency rather than be channelled through the Board.

It is **recommended** that the levy approved by the people in the region be applied equally against all wood from private woodlot sold from that region to a mill that is licensed by the marketing agency as a buyer to whom the levy applies.

It is **recommended** that if the Board continues to be funded by a levy on wood used by industry that the same levy be applied to both private and crown wood. This would remove a presently perceived inequity.

## 7.7 Summary

The approach being recommended is, in essence, a governing structure primarily concerned with the marketing of wood from woodlots. The structure is to be comprised of regional independent marketing agencies voted in place and governed by all woodlot owners and producers in the region, and that is directly accountable to them. These agencies will be operated under a marketing plan that is approved by the Board and passed by Cabinet as a regulation under the Act. The marketing plan

will provide the marketing agency with jurisdiction over all wood from private woodlots in its region such that all producers and all wood consumers have only one agency to deal with in a particular area.

The major selling point of this governing structure is that it will be directly accountable to its constituency - all woodlot owners and producers of the region. As such, it will have the potential to evolve into a multi-interest organization, able to represent the concerns and serve the needs of those it represents.

## 8. CHANGES TO THE ACT

Many of the major problems and weaknesses discussed earlier of the current system are a result of the legislative scheme as outlined in the Act. The Act has been the subject of some judicial criticism in the past. In MacPhee vs N.S. Pulpwood Marketing Board (Supra), Mr. Justice Burchell said at page 25 of his decision:

> The "sketchy" character of the Act was noted by Chief Justice MacKeigan in the passage from his decision in the N.S. Forest Industries case quoted earlier in the narrative of background facts. The rules of procedure adopted in 1976 are equally sketchy and neither the rules nor the Act lay down any method by which support is to be measured or assessed. The deficiencies of the overall scheme were also recognized by the Board itself in the 1976 decision to which I have referred. The weakness of the scheme also appears to have been recognized by the legislature in recent amendments (S.M.S. 1986, c. 52) which includes a specific power to make regulations "establishing guidelines" for the purposes of Section 7 and 8".

The Act contains elements of labour legislation, agricultural marketing legislation, and other concepts unique to the Act. It would benefit from being entirely rewritten to create a clear and comprehensive legislative scheme for the marketing of primary forest products in Nova Scotia and to overcome the problems earlier outlined. However, this is not likely to happen in the near future since the Act has only recently been amended. A second best alternative would be to tinker with the Act as it now stands to enable its goals to be met. Either way, the legislative scheme must be amended since

the recommended approach cannot be achieved with the Act in its present form.

The problems with the Act can be discussed under four categories:

- Definitions;
- Registration of bargaining agents;
- The bargaining process; and
- Dispute resolution.

## 8.1 Definitions

It is recommended that the definition of "producer" in the Act be amended to include woodlot owners. Then, the definition of "association" as an organization of "producers" can stand as it is (subject to the following recommendation regarding the registration of marketing agents). As stated earlier, it is essential that woodlot owners get into the Act.

Mr. Justice MacKeigan at paragraph 170 in N.S. Forest Industries vs. N.S. Pulpwood Marketing Board (Supra) noted that when the NSWOOA first asked to represent primary pulpwood producers:

> The Board could have and should have clarified and redefined that term. It could have decided that the applicant meant or should have meant "all woodlot owners".

In New Brunswick and Quebec, the definitions of producer vary from one marketing plan to another. An example of a definition of "producer" including woodlot owners is contained

in the Joint Plan of Montreal Region Wood Producers (supplement RRQ, O.C. 839-82, 8 April, 1982):

> A producer governed by this plan is any person who owns or is in possession of a woodlot in the territory described in Section 5, the wood from which is intended for marketing.

The marketing plans may contain further definitions, so long as they do not conflict with the Act. It may be useful to include in the marketing plans definitions of terms such as woodlot owner, private woodlots, etc.

## 8.2 Registration Of Bargaining Agents

The Board must have the power to register as a bargaining agent a new marketing agency created by the approval of a marketing plan in a region. This can be accomplished by either:

- amending the definition of "association" to include an organization constituted under a marketing plan; or

- adding to the Board's powers to register an association the power to register an organization constituted under a marketing plan.

It would appear simpler to effect this through the definition of "association".

It is **recommended** that to enable the Board to register new marketing agencies as bargaining agents, the following words

be added to the definition "association" in the Act: "and includes an organization constituted under a marketing plan".

## 8.3 The Bargaining Process

Section 9 to 15A inclusive of the Act should be repealed and replaced with a section authorizing the Board to supervise the negotiating process and to pass regulations containing details such as when negotiations should commence, when mediation can be requested, how the negotiation and mediation process should work etc. If this is not possible, further tinkering may achieve the desired result.

The two major problems with the bargaining process are:

- It is cumbersome; and
- It is lengthy.

An example of its cumbersome nature is that an association, after being registered to bargain, must apply for a declaration that a bargaining situation exists. Mr. Justice MacKeigan in N.S. Forest Industries vs. N.S. Pulpwood Marketing Board (Supra) noted at paragraph 162 of that decision that:

> Registration merely establishes the applicant as a bargaining agent at large for its group of producers but with no specific bargaining rights.

Surely the purpose of the whole exercise of registration is to establish a group with bargaining rights, making the need to request such a declaration redundant. However, a determined Board may work around problems such as this by, for example, passing an order deeming such a declaration

to take place for all bargaining agents at a specified date each year.

**Negotiation Timetable**

It is **recommended** that, in order to streamline the negotiation process, the Board establish an annual negotiation timetable so that negotiations shall start and finish by a specified date each year.

Only one minor change is required in the Act to permit this. Section 11 of the Act now reads:

> Upon the expiration of not less than six months after the parties have entered into bargaining and the parties have been unable to reach agreement, any party to the bargaining may make application to the Board for a declaration of deadlock.

The words "upon the expiration of not less than six months" should be deleted. Then, the Board can establish dates as to when negotiations must commence, and when the parties can request mediation. The process should be encouraged to take place in a much shorter time frame than six months.

It is **recommended** that the negotiation timetable be designed so that negotiations commence in late fall of each year and are entirely concluded by early spring. Enough flexibility should be left here so that if both parties agree, deadlines can be extended, or, one party can request a deadline to be extended and the Board can decide whether to extend it or not.

A further level of flexibility should exist to enable the parties to negotiate long term contracts. However, the annual timetable should remain in the event that both parties do

not agree to the concept of longer term contracts, or do not agree to extending timetable deadlines.

## 8.4 Dispute Resolution

As stated earlier, the purposes of the Act cannot be achieved unless there is a mechanism available to finally resolve disputes when they occur. Ideally, the existing mediation process should be repealed and the Board should be given the power to pass regulations or take such action as is required to effect dispute resolution. The Board could then draw up appropriate procedures.

In the alternative, It is **recommended** that if the existing mediation process stands, the Board should have the power to intervene at the request of either party if it becomes obvious that the process will not result in a settlement in a timely fashion.

It is **recommended** that the power to intervene include the power to take such steps as are necessary to ensure a settlement of any dispute relating to any negotiable item. Then, it is the Board's decision how best to achieve a settlement. The Board must also decide which items are the subject of a legitimate dispute. It may decide itself to deal with the issue, send the parties back to the bargaining table or name an individual or a panel of third parties to arbitrate a dispute. This power to intervene could be added to the Act following Section 15A(3), or alternatively under Section 4 dealing with the powers of the Board.

To reiterate, it is critical to the success of the new groups and to achieving the intent and objectives of the Act

that a mechanism exist to finally resolve disputes when they occur, as they inevitably will from time to time. In New Brunswick and Quebec, arbitration is available to settle disputes at the discretion of the Board in those provinces.

## 8.5 Keep The Act And The Board Out Of Court

There are at least three courses of action that may reduce the number of court challenges and minimize their effect:

### a) A Strong Privative Clause

An example of a strong privative clause was contained in the first reading version of Bill C-74, The Canadian Environmental Protection Act. Section 23(b) of that version read:

> (6) No determination of a review panel made under this section, or purporting to be made under this section, shall be
>
> (a) questioned, reviewed, prohibited or restrained, or
>
> (b) made the subject of any proceedings in or any process of any court,, whether by way of injunction, certiorari, prohibition, quo warranto or otherwise,
>
> on any ground, including the ground that the determination is beyond the jurisdiction of the panel to make or carry on or that, in the course of any proceeding, the panel for any reason exceeded or lost its jurisdiction.

Such a clause will not prevent a challenge on constitutional grounds and may not prevent a challenge on jurisdictional grounds, but it may serve to clarify existing law

and narrow the potential scope of court challenges to decisions of the Board.

**b) Government Persuasion**

The provincial government has a variety of ways to influence industry's behaviour, including gentle persuasion. The government should let industry know that it does not want its legitimate policy initiatives continually dragged through the courts, and that it wants industry to deal (or continue to deal, as the case may be) with the new marketing agencies in a professional and business-like manner.

**c) Legislative Intervention**

Provided it acts within its constitutional jurisdiction, the legislature reigns supreme. If a court decision places an interpretation on the Act, a regulation or an action of the Board that is contrary to the intent of the government or the Board, legislative intervention may be necessary to correct or change the impugned provision or place a proper interpretation on it to ensure that the legislative scheme stays on its intended track. There are many precedents for this action, and it would send a clear signal to all parties that the government is determined to make the structure work.

Court battles consume valuable time and resources and distract all parties from their immediate and sometimes long term concerns. Debates about the marketing of primary forest products should be returned to the forum of public policy where they belong.

## 9. TRANSITIONAL PROVISIONS

It has been suggested that all existing bargaining agents in Nova Scotia be decertified immediately. However, this is too extreme. It is important not to leave any gaps in existing representation and bargaining such as it is.

It is **recommended** that in order to phase in the new structure with minimum disruption, existing bargaining agents remain certified and operating as such until new marketing agencies are formed and operational within the entire area represented by an existing bargaining agent.

It is **recommended** that as new regional marketing agencies are formed, the regions they represent be excluded from the jurisdiction of existing bargaining agents.

It is **recommended** that existing contracts be allowed to run their course unless the Board and both parties to the contract agree otherwise.

It is **recommended** that the term of any new contracts negotiated by existing bargaining agents be limited to one year, and that further bargaining only take place if areas within the current bargaining structure are as yet unrepresented by a new marketing agency. Otherwise, it may be difficult to organize a region if part of its wood supply is locked into a long term contract. Contracts of new marketing agencies should not be restricted to one year.

It is **recommended** that, if a vote to establish a new marketing agency fails, the Board permit existing bargaining units to remain certified pending a show of support by woodlot

owners and producers in the areas they represent, and that if successful, the groups be restructured to meet as many requirements of the approach recommended by this report as possible.

In the background is the decision by Mr. Justice Burchell in MacPhee et al. vs. N.S. Pulpwood Marketing Board et al. discussed earlier which places the Board in limbo. It is **recommended** that all current applications for certification or decertification remain on hold until the Board adopts new guidelines and criteria to implement the approach recommended by this approach. If this is not possible in terms of decertification bids against existing groups, the Board will have to clarify its existing criteria to meet the requirements of the court's decision, and deal with decertification bids as they arise.

## 10. THE ROLES OF EXISTING GROUPS IN THE NEW MARKETING STRUCTURE

### 10.1 NSWOOA And NSLFPPA

Both these groups are attempting to provide the same province-wide structure to serve the needs of woodlot owners. Whether either, neither or both continue as they are depends on the support of their members. However, whether they continue to play a role in marketing will be determined entirely by the wishes of the majority of woodlot owners in the new regional marketing agencies that will be created if this report is accepted.

It is possible that both these groups will come forward to the Board with requests to sponsor a new marketing agency in their area and may assist in promoting it. However, if they lack widespread support themselves, this could do more harm than good. The best scenario would be to have all existing organizations set aside their differences and support the formation of new marketing agencies.

If one group persuades the Board that it should have the opportunity to administer a new marketing plan (as discussed earlier), the Board should consider whether to proceed to a vote in stages. First, the woodlot owners could be asked if they want the group in question to administer a new marketing plan and second, if not, whether they want a marketing plan that would create a new marketing agency.

Another potential role for these two groups, besides assisting in the formation of a new marketing structure, is that one of them may form the basis of a voluntary province-wide association whose members would consist of the new regional

marketing agencies - a federation of woodlot owners similar to those in New Brunswick and Quebec. They key is that it would be a voluntary organization. The regional organizations would join it and fund it only if the woodlot owners and producers in the region voted to do so. The provincial body would be representative of its regional members, rather than vice versa. In such an organization, the provincial body would be unable to impose its views on any one region. Rather, it would have to be governed by consensus.

One other potential role for the NSWOOA and the NSLFFPA is the formation of wood marketing cooperatives at some point in the future as discussed under Part 11 of this report.

## 10.2 The Sawmillers

The Act is not restricted to woodlots in its application. However, the definition of "producer" in the Act excludes "a person who is primarily a processor of primary forest products or an affiliate of such person" since, as buyers of wood they are adverse-in-interest to woodlot owners as sellers of wood. Strictly speaking, it therefore appears that sawmillers may not be eligible to come under the jurisdiction of the Act or the Board other than as buyers of wood from woodlots. But, the sawmillers are both buyers and sellers of wood vis-a-vis the pulp and paper mills, and presently, the WPMA is certified to bargain with Scott Paper Limited for the sale of pulpwood. In addition to the jurisdictional question, this creates the undesirable situation of having two bargaining units negotiating with the same mill for the same commodity in the same area (the second bargaining unit being the Central Suppliers Division of NSWOOA). This conflict should either be eliminated or minimized in its effect.

The following comments assume that the sawmillers will want to come under the jurisdiction of the Act and the Board in order to bargain with the pulp and paper industry. This is possible as well as desirable in light of the unique relationship of the sawmillers with the pulp and paper industry (discussed below).

In order to overcome the exclusion in the definition of "producer" above, it is recommended that the Board be empowered to include the sawmillers as coming under the jurisdiction of the Act. This might be accomplished by following the exclusion in the definition with a provision allowing the Board to order exceptions.

**Sawmills vs. Pulpmills**

Sawmills are, naturally, most interested in purchasing sawlogs to run their mills. They have various sources:

- Their own lands;
- Leased land from private woodlot owners;
- Purchased stumpage and roundwood from woodlot owners; and
- Pulpmills.

A considerable amount of their wood supply is obtained through long term leases from woodlot owners. Once land is leased to cut stumpage or once stumpage is purchased to be cut, the wood either way is under the control or ownership of the sawmill.

When cutting operations are carried out for sawlogs, a significant amount of pulpwood is also produced. The sawmills then desire to sell this wood to the pulpmills, at the very least on a break even basis. The sawmills also desire to sell wood chips (a by-product of sawmilling) to the pulpmills. However, the sawmills also rely on the pulpmills for a significant percentage of their sawlog supply, produced as a byproduct of pulpwood cutting operations on land leased or owned by the pulpmills. Due to this reliance on the pulpmills both for a source of wood and a market for their by-products, the sawmillers feel that they are in an extremely vulnerable position. In spite of this, thus far they have preferred to go it alone rather than join forces with another bargaining agent. Unfortunately, as they candidly admit, they give in very easily when negotiating with the pulpmills.

Sawmillers also have a vested interest in keeping enough of a price difference between sawlogs and pulpwood to encourage the sorting of sawlogs and to prevent pulpwood from competing with sawlogs. They also have an interest in keeping the price of sawlogs as low as possible.

**Should Sawmillers Be Bargaining Agents?**

From the foregoing, it would appear that sawmillers may have little incentive to negotiate high pulpwood prices and are in a weak bargaining position with the pulpmills due to their reliance on them as a source for sawlogs and a market for chips. For these reasons, sawmillers are not an appropriate group to negotiate prices for pulpwood originating from private woodlots. However, the sawmillers are an appropriate group to negotiate for all other matters that form part of their special relationship with the pulp mills such as pulpwood volumes, the

sale of wood chips or other by-products, and the purchase of sawlogs. To enable this, the sawmillers should seek to become a marketing agency under the Act so that in their dealings with the pulp and paper mills they will have similar benefits and safeguards within the new marketing structure as the woodlot owners and producers.

The goal, then, is to ensure that the sawmillers' negotiations with the pulp and paper mills do not have a negative impact on the woodlot owners' negotiations, while at the same time preserving the sawmillers' relationship and bargaining position with the pulp and paper mills.

In considering whether sawmillers should be bargaining agents it should be remembered that the underlying goal of the Act is to improve the bargaining position of the woodlot owners. Anything that hinders this goal may be considered contrary to the purposes of the Act and should not be permitted by the Board. However, since the Act has application to all primary forest products, other bargaining situations such as between sawmills and pulpmills are possible assuming the jurisdictional question discussed above is resolved. But they should only remain possible so long as they do not conflict with the primary goal of the Act. Negotiations between the pulp and paper mills and the sawmills for wood chips, sawlogs and pulpwood volumes should not have an adverse effect on the bargaining position of the woodlot owners, but allowing the sawmillers to negotiate a pulp price probably would. Therefore, the latter either should not be permitted at all, or should be permitted in such a matter that it does not effect the woodlot owners.

It is **recommended** that the sawmillers be considered eligible to be registered as a marketing agency to bargain for:

all the terms of sale of pulpwood with the exception of price; the sale of wood chips; the purchase of sawlogs; and, any other matter relevant to their relationship with the pulpmills.

The pulpwood price negotiated by the new regional woodlot sector marketing agencies should be the minimum price for all producers of pulpwood from private woodlots. It is important that pulpwood price negotiations be carried out by a group representing woodlot owners since the amount of the negotiated price will ultimately influence how much a woodlot owner gets paid for stumpage whether the wood is harvested by a sawmiller, a contractor or the owner personally.

Since levy is always a major concern, it is recommended that all producers of wood from private woodlots, including the sawmillers, pay the same levy. However, if the sawmillers remain registered to bargain for pulpwood volumes they produce from private woodlots, the levy for this wood delivered by the sawmillers should be split between the regional marketing agency and the sawmillers' bargaining agent in a manner to be determined by the Board.

As a transitional provision, it is recommended that the WPMA remain certified as at present until a new marketing agency representing sawmillers is formed and operational in the area it represents. If the sawmillers do not form a marketing agency, the Board may have to consider whether it is appropriate to continue the present certification of the WPMA as new woodlot sector marketing agencies begin to form.

In implementing these recommendations, a process parallel to that recommended for the woodlot sector marketing agencies should be used: a marketing plan should be drawn up by

the Board in consultation with the sawmillers and voted on (by secret ballot) by all eligible sawmillers. Owing to the very different nature of the sawmill sector as distinct from the woodlot sector, the Board might give serious consideration to having only one marketing agency representing all sawmillers in Nova Scotia.

To summarize, a separate marketing agency representing sawmillers should be formed that would enable sawmillers to negotiate all relevant matters except the price of pulpwood with the pulp and paper industry.

## 10.3 Group Ventures

The question to be addressed here is not whether the group ventures have a role in wood marketing: they do. The question is, what kind of role?

The group ventures have expressed an interest in becoming registered as bargaining agents for their members. Specifically, The Forest Group Venture Association of Nova Scotia desires to be a province-wide bargaining entity to represent all woodlot owners and to negotiate with all mills for all their forest fibre requirements.

It has already been argued in this report that a province-wide bargaining unit is not appropriate at this time. But, if the group ventures were to become bargaining agents, especially on a province-wide scale, it would likely spell the beginning of the end of at least The Forest Group Venture Association and possibly many individual group ventures.

The group ventures were designed and formed for the purpose of delivering forest management services to their members. This is and should remain their primary purpose. Becoming involved in marketing as bargaining agents dealing with all the mills, representing all woodlot owners and producers and administering the numerous contracts would dilute their objectives and divert their resources to such an extent that it would be unlikely they could continue to adequately fulfill their primary function related to forest management. Based on past experience, it should be clear that wood marketing is a contentious subject at the best of times and requires all the resources of strong and cohesive organizations to make it work. Only after the marketplace becomes relatively stable will a marketing organization be able to devote time and resources to forest management concerns. Even then, experience in other provinces suggests that the forest management function is best carried out by a separate organization that works closely with the marketing organization. This kind of cooperation is necessary due to the inter-dependence of wood marketing and forest management concerns. But they are best handled by separate organizations.

It therefore appears that the group ventures are not a type of organization that can be considered appropriate for collective bargaining purposes.

**Role Of Group Ventures**

The group ventures have potentially five roles to play in the new marketing structure:

- Assist in promoting the new marketing agencies, perhaps even taking the lead in some areas;

- Present positions on their specific concerns to the board of directors of the marketing agency and cooperate in the development of forest management policies;

- Act as a supplier of wood under the marketing agencies' contracts;

- Individual group venture members, as woodlot owners, can both vote in the formation and operation of the marketing agency and run for office on its board of directors; and

- The Forest Group Venture Association can cooperate with a future federation of the marketing agencies in representing the concerns of woodlot owners.

The marketing agencies must represent all woodlot owners in their regions. In any marketing region there may be two, three or four group ventures which will interact with the marketing agencies and will want their concerns addressed.

It is **recommended** that, in each marketing region, the group ventures act as suppliers of wood under the contracts negotiated by the marketing agencies, and that the group ventures cooperate with the marketing agency in developing policies relating to forest management and ensuring that the functions of wood marketing and forest management complement one another.

## 10.4 Producers

It is **recommended** that all producers of wood from private woodlots (with the possible exception of sawmillers represented by their own marketing agency) be considered as suppliers of wood under the contracts negotiated by the new marketing agencies. As previously recommended all producers of wood from private woodlots in a region should pay the levy.

## 10.5 Truckers

So long as roadside prices are negotiated, there is no direct role for truckers in the bargaining process. However, if the marketing agencies begin negotiating mill-delivered prices, which include transportation costs, the truckers may wish to make their views and their needs known to the marketing agencies in an organized manner.

## 11. THE ROLE OF THE BOARD

As has been demonstrated in the past (before the formation of the new Board in November 1987), the Board got itself into more trouble by doing too little than by doing too much. Under the Act, the Board has a very broad mandate to do what is required to achieve the purposes of the Act. In providing the Board with such a broad mandate the government clearly intended to give the Board the power it needed to do its job so that there would be no need for the government to become directly involved. The Board must begin exercising its mandate as the government and the legislation intended. The new Board, under the chairmanship of Graham Langley, seems capable and willing to take up the challenge and has stated it intends to take a positive, proactive approach. This will be essential to get a new marketing structure established.

The Board's role should include the following activities:

### 11.1 Leadership

Given the current disarray amongst existing woodlot owner organizations, the Board may have to take the lead in identifying potential marketing regions and encouraging their formation and cooperation with any existing groups already there. The Board may also assist by encouraging new and existing leaders to come forward to help promote the new marketing agencies. However, the Board must also take care to maintain its impartiality.

## 11.2 Implementation

To implement the new system the Board should:

- Assist in drafting changes to the Act and encourage their swift passage;
- Prepare and approve voting criteria; and
- Assist in drafting marketing plans for the new marketing agencies.

## 11.3 Conduct Votes For Marketing Plans

The Board must ensure that:

- Lists of woodlot owners are accurate and up to date;
- Wood producers who are not woodlot owners can be eligible to vote;
- All woodlot owners and producers receive by mail an accurate information package during a campaign;
- Campaigns are conducted in a fair and orderly manner;
- Sufficient meetings are held at convenient locations so that woodlot owners and producers have an opportunity to discuss the issues;
- All eligible woodlot owners and producers receive a secret letter ballot and have the opportunity to vote; and
- Sufficient funds are available to carry out the above steps.

## 11.4 Approval And Supervision

The Board must determine whether a vote is successful. If so, the Board may recommend that the approved marketing plan be passed as a regulation under the Act.

The Board must also supervise the operation of the new marketing agencies and the negotiations they are involved in.

Regarding the operation of the marketing agencies, the Board should:

- Receive notices of meetings and their minutes;
- Approve the amount of the levies recommended by the marketing agency;
- Approve the operating budgets of the marketing agencies; and
- Ensure the marketing agencies operate according to the requirements of the Act, their marketing plans, and all orders of the Board.

Regarding negotiations, the Board should:

- Prepare an annual negotiation timetable as previously recommended;
- Approve items that may be negotiated, mediated, or subject to any other form of dispute resolution (i.e. price, volume, delivery schedules, specifications, quality, bonuses etc.); and
- Intervene if the parties cannot reach agreement, and provide for effective dispute resolution within a timely fashion as earlier recommended.

As part of its supervisory role, the Board should periodically review the status of the marketing agencies as registered bargaining agents under the Act, as previously recommended.

## 11.5 Start-Up Assistance

It may take a year or two for a new marketing agency to develop enough of a cash flow to be self-sufficient.

It is **recommended** that the Board provide start-up funding assistance for the new marketing agencies.

## 11.6 Encourage Government Support

As discussed earlier, government support is important to:

- Permit the Board to carry out its mandate (including permitting changes to the Act);
- Encourage the forest industry to accept the government's policy decisions and deal with the new marketing agencies; and
- Encourage the forest industry to settle bargaining and marketing disputes.

Regarding the latter, It is **recommended** that, in addition to providing for an effective dispute settlement mechanism, the government designate crown wood as a residual source of wood supply and use this and any other means at its disposal to encourage the forest industry to reach a settlement with the marketing agencies in a timely fashion.

## 12. WHERE TO START

The Board should adopt the following sequence of events:

1. Carry out extensive consultation on the recommendations contained in this report.
2. Ensure that the necessary changes to the Act are made as soon as possible.
3. Adopt voting criteria for the establishment of marketing agencies.
4. Approve a pilot project area and enter into consultations with existing groups in the area.
5. Prepare a marketing plan in consultation with groups or individuals in the area.
6. Supervise the promotion of the marketing plan and information packages to woodlot owners and producers.
7. Conduct the vote.
8. If successful, seek approval of the marketing plan as a regulation under the Act.
9. Register the new marketing agency as bargaining agent.
10. Establish a negotiation timetable.
11. Focus all resources on the new marketing agency to iron out the bugs and MAKE IT WORK.
12. Expand the concept if it proves to be successful.

## 13. OTHER ISSUES

The following issues are in many ways peripheral to the subject of this report. But they are important issues and can be dealt with in the marketing structure I have proposed.

### 13.1 Export of Wood

**a) Offshore**

If the new marketing structure proves effective and if effective dispute resolution is available, the amount of wood going to overseas markets should never be significant enough to be concerned with (in fact, a small amount of export can be useful to sell wood not presently usable in Nova Scotia). Otherwise, the volumes of export wood will likely increase as a means to increase competition and boost wood prices as discussed earlier in this report.

**b) Inter-Provincial**

If the new marketing agencies are given the power to license wood buyers, they (or the Board) should require out-of-province buyers to negotiate the terms of sale of wood originating from private woodlots. This could at least provide a means of monitoring and controlling the outflow of wood from that source.

### 13.2 Random Length Wood And Other Buyer Specifications

A mill's processing equipment often has fairly rigid requirements in terms of types and sizes of wood it can use. However, there is usually enough flexibility such that the mill's

requirements can be balanced with the ability of the individual woodlot owners and producers to produce the wood.

The issue of random length wood is currently of concern in central Nova Scotia to both woodlot owners and sawmillers since Scott Paper Limited is switching from taking eight foot lengths to random lengths. Producers and woodlot owners without large wood equipment are concerned that: (a) they cannot produce random length wood and (b) they will have to find alternate markets for their eight foot wood. No recommendation will be made on this issue since it is more properly the subject of negotiation between the mill and the woodlot owners. If the negotiation process cannot resolve it, it would be entirely proper for the Board and/or the government to intervene in the matter to attempt to resolve it.

## 11.3 Forest Management And Strategic Planning

This report has already suggested that wood marketing and forest management activities must be closely related and that the group ventures and the new marketing agencies should cooperate to develop and promote forest management policies and activities.

Regarding long-term planning, in the Reed Report (Supra) Mr. Reed stated at page 48:

> Strategic planning is almost entirely ignored by woodlot owners in Nova Scotia. This leaves them without the means to pursue important initiatives with both provincial and federal governments. In New Brunswick a planning framework is being implemented with these components:

- Computerized inventory analysis;

- AAC targets linked to silviculture programs;
- Utilization standards in the woods;
- Product mix targets;
- Market projections; and
- Marketing objectives.

It is recommended that the province examine the new planning model in New Brunswick as a first step in devising one suitable for Nova Scotia woodlot owners.

This type of strategic planning requires a strong and effective organizational structure before it can have any hope of reaching a group of people as diverse as Nova Scotia's 30,000 woodlot owners. The planning model in New Brunswick Mr. Reed refers to is based on strong woodlot sector marketing organizations. The marketing structure proposed by this report can form the basis for Mr. Reed's recommended strategic planning in the woodlot sector.

## 11.4 Forestry Cooperatives

Wood marketing cooperatives owned and controlled by its members have been proposed as an alternative to the existing bargaining units or possibly in addition to them. However, wood marketing co-ops would not be successful without a strong and effective marketing structure such as the one I have proposed in this report, and would very likely flourish within it. Therefore, before this concept can be seriously considered, a new marketing structure must be well established and be operating successfully.

The relationship between a wood co-op and a marketing agency must necessarily be a close one since a co-op would act as a supplier of wood under the marketing agencies negotiated contracts just like the group ventures and other large wood suppliers. In Nova Scotia for example there is one Milk Marketing Board and three milk co-ops which supply milk through it. As a further example the SNB Wood Co-op in southern New Brunswick acts as the major supplier of wood under the SNB Forest Products Marketing Board's contracts, and acts as the functional arm of the marketing board. Many of the directors of the two organizations are one and the same people and joint meetings are usually held. In both these examples, it is not likely the co-ops would have survived were it not for the negotiating and marketing powers of the marketing boards involved.

**Co-Ops Can Build Equity**

Unlike a marketing agency created under a marketing plan, a co-op has the ability to build equity as share capital or to return profits to its members. There may be a trend developing in New Brunswick to use co-ops to enable the woodlot owners to obtain ownership in wood processing facilities as a means to influence wood prices and markets. This capability has been a significant factor in the success and effectiveness of woodlot owner organizations in Sweden.

Co-ops may also be used to promote export sales as a means to influence local prices and markets.

**NSWOOA And ENSLFFPA**

If these two organizations are unable to obtain the support needed from all woodlot owners to play a role in the marketing structure proposed, the formation of a wood marketing co-op (following the establishment of the new marketing structure) that would act as a supplier of wood for their members through the new marketing agencies contracts may be the key to their future existence as influential players in the woodlot sector. It is hoped that they can both continue to play a role.

## 14. CONCLUSION

The mood among woodlot owners and producers in Nova Scotia is that the marketing situation probably could not be much worse than it is and that something new is required. Industry and government seem to acknowledge this as well. This mood suggests strongly that a "window of opportunity" is now open to try a new approach. If a credible alternative were proposed at this time, it would likely receive at the very least a great deal of consideration and at the very best widespread support.

The structure proposed in this report, while tailored to the Nova Scotia situation, is similar in concept to that in New Brunswick and Quebec. This is no accident. Those structures have been in place, have proved effective and have held together for almost 30 years now, all of which is extremely persuasive. The alternatives considered in this report were weighed against the obvious success of the structures in those provinces, and the apparent lack of success of many efforts in Nova Scotia. In this report, an attempt was made to take the best aspects of each approach, correct some of the weaknesses, and apply it to Nova Scotia. Now the support of the woodlot owners and producers is required along with the cooperation of industry and the encouragement of the government.

The new Board's role in the process is critical, and their obvious enthusiasm and willingness to take on the challenge is encouraging.

The support of the existing organizations would be very helpful. However, some of them may feel threatened by some of the recommendations in this report although there is a

potential role for all existing groups and individuals. One hopes that self-interest plays a minor role in the evaluation of this report. As one participant has said:

> We must strive to rise above our individual preferences and address our greater responsibility to woodlot owners across the province.

He is right.

## LIST OF RECOMMENDATIONS

### Organizational Approach

It is recommended:

1. That new organizations be established with defined geographical limits to a maximum of four counties (p. 52).

2. That these new marketing agencies be autonomous within their own regions and operate independently one from the other unless, once established, they choose otherwise (p. 52).

3. That marketing plans be drawn up by the Board in consultation with woodlot owner representatives in the areas requesting bargaining status (p. 53).

4. That the new marketing agencies be administered by a new board of directors created under the authority of the marketing plan (p. 54).

5. That a marketing plan give the regional marketing agency the power to negotiate terms of sale of all primary forest products originating from private woodlots in its area, including price, volume, delivery schedules and any other matter relating to the sale and delivery of wood, subject to approval of the Board (p. 54).

6. That these powers may only be used with the prior approval of the Board (p. 55).

7. That the marketing plans grant to the new marketing agencies the power to be exclusive sales agents to the mills they negotiate with, in relation to wood from their area (p. 56).

8. That the marketing plans contain the power to license buyers and sellers in the region, subject to the approval of the Board (p. 56).

**Voting Requirements**

It is recommended:

9. That a market plan be voted in place by all eligible woodlot owners and producers in the region to which the plan applies (p. 57).

10. That, to be eligible to vote, a woodlot owner must own a minimum of 10 ha of forested land in the region, and a producer who is not a woodlot owner must own the cutting rights to at least 10 ha of private owned forested land in the region (p. 57).

11. That a private owner who also owns a wood processing facility be excluded from the vote and the operation of the marketing plan (the Act currently exempts producers who are processors from its operation) (p. 57).

12. That a vote be conducted by a secret letter ballot; one person, one vote (p. 57).

13. That the Board not approve a marketing plan unless it is approved in a vote supervised by the Board by at least a two-thirds majority of those eligible voters who choose to vote (p. 59).

14. That the Board retain the discretion not to approve a vote if it is obvious that, in all the circumstances, an insufficient number of voters have voted, and too small a proportion of land was involved in the vote (p. 59).

15. That the Board review, at least once every five years, whether the new marketing agency should remain in place (p. 60).

**Operational Considerations**

It is recommended:

16. That the marketing plan specify clearly that all woodlot owners and producers have the right to attend meetings of the local marketing agency, to raise matters of concern and vote on them (p. 60).

17. That the marketing plan specify that each marketing region be divided into districts and that district meetings be held at least once a year, before the annual meeting (p. 61).

18. That the board of directors be formed of at least one director elected at the district meetings by the woodlot owners and producers in attendance (p. 61).

19. That the officers of the board of directors be elected at the annual meeting, by those attending the annual meeting from among the directors with the exception of the president who could be elected from the floor (p. 61).

20. That, to be a director, a person must own a woodlot and have produced wood for sale at least once in the preceding five years (p. 61).

**Market Levies**

It is recommended:

21. That the market levy for a region be determined by majority vote at the annual meeting of he marketing agency in that region, subject to approval and supervision by the Board (p. 62).

22. That the levy be payable directly to the marketing agency rather than be channelled through the board (p. 62).

23. That the levy approved by the people in the region be applied equally against all wood from private woodlots sold from that region to a mill that is licensed by the marketing agency as a buyer to whom the levy applies (p. 62).

24. That if the Board continues to be funded by a levy on wood used by industry that the same levy be applied to both private and crown wood (p. 62).

**Changes To The Act**

It is recommended:

25. That the definition of "producer" in the Act include woodlot owners (p. 65).

26. That, to enable the Board to register new marketing agencies as bargaining agents, the following words be added to the definition of "association" in the Act: "and includes an organization constituted under a marketing plan" (p. 66).

27. That, in order to streamline the negotiation process, the Board establish an annual negotiation timetable so that negotiations shall start and finish by specified dates each year (p. 68).

28. That the negotiation timetable be designed so that negotiations commence in late fall of each year and are entirely concluded by early spring (p. 68).

39. That, if the existing mediation process stands, the Board should have the power to intervene at the request of either party if it becomes obvious that the process will not result in a settlement in a timely fashion (p. 69).

30. That the power to intervene include the power to take such steps as are necessary to ensure a settlement of any dispute relating to any negotiable item (p. 69).

**Transitional Provisions**

It is recommended:

31. That, in order to phase in the new structure with minimum disruption, existing bargaining agents remain certified and operating as such until new marketing agencies are formed and operational within the entire area represented by an existing bargaining agent (p. 72).

32. That, as new regional marketing agencies are formed, the regions they represent be excluded from the jurisdiction of existing bargaining agents (p. 72).

33. That existing contracts be allowed to run their course unless the board and both parties to the contract agree otherwise (p. 72).

34. That the term of any new contracts negotiated by existing bargaining agents be limited to one year, and that further bargaining only take place if areas within the current bargaining structure are as yet unrepresented by a new marketing agency (p. 72).

35. That, if a vote to establish a new marketing agency fails, the Board permit existing bargaining units to remain certified pending a show of support by woodlot owners and producers in the areas they represent, and that if successful, the group be restructured to meet as many requirements of the approach recommended by this report as possible (p. 72).

36. That all current applications for certification or decertification remain on hold until the Board adopts new guidelines and criteria to implement the approach recommended by this report (p. 73).

**Sawmillers**

It is recommended:

37. That the Board be empowered to include the sawmillers as coming under the jurisdiction of the Act (p. 76).

38. That the sawmillers be considered eligible to be registered as a marketing agency to bargain for: all the terms of sale of pulpwood with the exception of price; the sale of wood chips; the purchase of sawlogs; and, any other matter relevant to their relationship with the pulpmills (p. 78).

39. That all producers of wood from private woodlots, including the sawmillers, pay the same levy (p. 79).

40. That the WPMA remain certified as at present until a new marketing agency representing sawmillers is formed and operational in the area it represents (p. 79).

**Group Ventures**

It is recommended:

41. That, in each marketing region, the group ventures act as suppliers of wood under the contracts negotiated by the marketing agencies, and that the group ventures

cooperate with the marketing agency in developing policies relating to forest management and ensuring that the functions of wood marketing and forest management complement one another (p. 82).

**Producers**

It is recommended:

42. That all producers of wood from private woodlots (with the possible exception of sawmillers represented by their own marketing agency) be considered as suppliers of wood under the contracts negotiated by the new marketing agencies (p. 83).

**Assistance**

It is recommended:

43. That the Board provide start-up funding assistance for the new marketing agencies (p. 87).

44. That, in addition to providing for an effective dispute settlement mechanism, the government designate crown wood as a residual source of wood supply and use this and any other means at its disposal to encourage the forest industry to reach a settlement with the marketing agencies in a timely fashion (p. 87).